

Club

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**RESTRICTIVE COVENANT**  
[Master Association Assessments - Barton Creek Country Club]

This Restrictive Covenant is made by FM PROPERTIES OPERATING CO., a Delaware general partnership ("FMP") and is as follows:

**RECITALS:**

A. FMP is the owner of certain real property located in Travis County, Texas, commonly known as the "Barton Creek Country Club & Resort," as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Property").

B. The Property benefits from certain common area and facilities, including but not limited to private roadways, entryways, and landscaping, maintained by the Barton Creek Master Property Owners Association, Inc., a Texas non-profit corporation (the "Association"), pursuant to that one certain Master Declaration of Covenants, Conditions and Restrictions, dated November 28, 1990, recorded in Volume 11324, Page 707, Real Property Records of Travis County, Texas (the "Restrictions").

C. On an annual basis, in accordance with Section 5.03 of the Restrictions, the Board of Directors of the Association adopts an annual budget (the "Annual Budget") based on an estimate of the expenses to be incurred by the Association in performing its functions under the Restrictions. Assessments necessary or required to discharge expenditures reflected on each Annual Budget are then levied against owners of property encumbered by the Restrictions.

D. FMP hereby desires to impress upon the Property a restrictive covenant which will permit the Association to allocate a portion of the Annual Budget against the Property and the owner or owners thereof.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens and charges, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns; and (ii) that each contract or deed which may be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions, restrictions, liens and charges, regardless of whether the same are set out or referred to in said contract or deed:

1. **Allocation of Annual Budget Expenses.** The Association shall allocate and levy, on an annual basis (the "Annual Levy"), TWENTY THOUSAND AND NO/100 (\$20,000.00) (the "Base Levy"). A statement of Annual Levy shall be mailed annually to the owner or owners of the Property. The Base Levy shall be subject to increase, on an annual basis, by an amount equal to the Consumer Price Index Escalator, defined below (the "Additional Levy"). Any Additional Levy shall be included in the second Annual Levy and each succeeding Annual Levy. The Additional Levy shall be due and payable, and subject to the same remedies and lien rights in the event of non-payment, as the Base Levy.

Under the Consumer Price Index Escalator, the Additional Levy shall be equal to an amount determined by multiplying the Base Levy by the percentage of increase, if any, in the cost of living index on the date which is twelve (12) months after the date of the Annual Levy immediately prior to the Annual Levy for which the Additional Levy is being computed over and above the cost of living index (base figure as hereinafter defined) which exists on the Effective Date hereof. Such increases in the cost of living index shall be measured by the U.S. Department of Labor Consumer Price Index for all Urban Consumers, all items figure 1982-1984 - 100 as published by the Bureau of Labor Statistics of the United States Department of Labor. The base figure for purposes of this paragraph shall be the last figure published prior to the Effective Date. In the event that (i)

use  
December  
figure  
each  
year

as of 8/21/96  
which is  
7/96

REAL PROPERTY RECORDS  
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July, 1996 =  
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the Bureau of Labor Statistics or any successor agency of the United States ceases to use the 1982-1984 average of 100 as the basis of calculation, or (ii) a substantial change is made in the number or character of "market basket" items used in determining the Consumer Price Index for all Urban Consumers, or (iii) the Consumer Price Index for all Urban Consumers shall be discontinued for any reason, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the Consumer Price Index for all Urban Consumers together with information which will make possible the conversion to the new index in computing the Additional Levy. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information, the Association shall use such other index or comparable statistics on the cost of living for Travis County, as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority.

Any Annual Levy which remains unpaid thirty (30) days after the Annual Levy statement has been mailed to the owner of the Property or the address for such owner maintained by the Travis County Central Appraisal District shall be deemed delinquent. A delinquent Annual Levy shall accrue interest at a rate of twelve percent (12.0%) per annum.

2. **Assessment Lien and Foreclosure.** A delinquent Annual Levy (together with interest as provided in Paragraph 1 above, and the cost of collection, including attorney's fees as provided for herein) shall become a continuing lien and charge on the Property, which shall bind such Property in the hands of the owner, and such owner's heirs, devisees, personal representatives, successors or assigns. The lien shall be superior to all other liens and charges against the Property, except for only tax liens and all sums unpaid on a first mortgage lien of record. To evidence the lien, the Association or its agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Property and a description of the Property. Such notice shall be signed by an authorized representative of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. Such lien for payment of the assessment shall attach with the priority set forth above from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting owner's Property by the Association in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, the Association may institute a suit against the owner personally obligated to pay the assessment and/or for the foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred. The Association shall have the power to bid on the Property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon receipt of a written request of any mortgagee, the Association or its agent shall report to said mortgagee any delinquent Annual Levy.

3. **Severability and Construction.** The provisions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular. All captions and titles used in the foregoing agreement and covenant are intended as solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs hereof.

EXECUTED to be effective on this 21<sup>st</sup> day of August, 1996.

FMP:

FM PROPERTIES OPERATING CO., a  
Delaware general partnership

By: 

William H. Armstrong, III,  
Attorney-in-Fact

ACKNOWLEDGED AND AGREED:

**BARTON CREEK MASTER PROPERTY OWNERS ASSOCIATION, INC.**, a Texas non-profit corporation

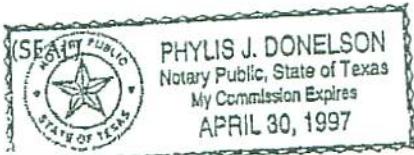
By: *[Signature]*  
William H. Armstrong, III, President

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 21<sup>st</sup> day of August, 1996, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.

*Phylis J. Donelson*  
Notary Public Signature

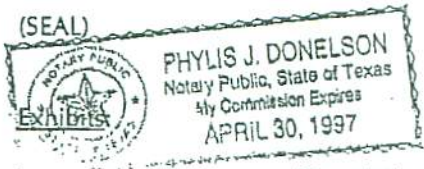


THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 24<sup>th</sup> day of August, 1996, by William H. Armstrong, III, President of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

*Phylis J. Donelson*  
Notary Public Signature



A - Description of Property (Tract I Only)

AFTER RECORDING RETURN TO:

Robert D. Burton  
Strasburger & Price, L.L.P.  
2600 One American Center  
600 Congress Avenue  
Austin, Texas 78701

RETURN TO: PHYLIS DONELSON  
HERITAGE TITLE  
98 SAN JACINTO BLVD. STE. 400  
AUSTIN, TEXAS 78701  
GF# CE19463

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

**PART A:** Lots 1, 2 and 3, THE SECOND REPLAT OF BARTON CREEK CLUB, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 89, Pages 168-171, Plat Records of Travis County, Texas.

**PART B:** Lot 1, Block A, BARTON CREEK CLUB DRIVING RANGE, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 90, Pages 215-216, Plat Records of Travis County, Texas.

**PART C:** Being 148.891 acres of land, more or less, being comprised of 6 tracts of land out of the Isaac Perkins Survey No. 38, Abstract No. 627, the Isaac Perkins Survey No. 37, Abstract No. 626, the Drury Minor Survey No. 416, Abstract No. 515 and the Patterson Moore Survey No. 84, Abstract No. 563, in Travis County, Texas, and being a portion of those certain tracts of land designated as Parcel A and Parcel H described in Special Warranty Deed recorded in Volume 11706, Page 590, Real Property Records of Travis County, Texas. Said 148.891 acres of land being more particularly described by metes and bounds in Exhibit "A-1" attached hereto and made a part hereof.

**FIRST EASEMENT ESTATE:** Intentionally Deleted

**SECOND EASEMENT ESTATE:** Together with Golf Cart Path Easements across those certain tracts of land described in Exhibit "A-1-1" attached hereto and made a part hereof as created in that certain Golf Cart Path Easement recorded in Volume 12644, Page 453, Real Property Records of Travis County, Texas.

**THIRD EASEMENT ESTATE:** Together with Golf Cart Path Easements across portions of Lot 1, Block D, Lot 46, Block C and Lot 74, BARTON CREEK SECTION G, PHASE 2, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 96, Pages 260-263, Plat Records of Travis County, Texas, and Golf Cart Path Easements across those certain tracts of land described in Exhibit "A-1-2" attached hereto and made a part hereof, all as created and described in that certain Reservation of Cart Path and Irrigation Line Easement Agreement recorded in Volume 12670, Page 162, Real Property Records of Travis County, Texas.

**FOURTH EASEMENT ESTATE:** Together with Irrigation Line Easements across portions of Lots 6 and 7, Block E, BARTON CREEK SECTION G, PHASE 2, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 96, Pages 260-263, Plat Records of Travis County, Texas, and more particularly described in Exhibit "A-1-3" attached hereto and made a part hereof, as created in that certain Reservation of Cart Path and Irrigation Line Easement Agreement recorded in Volume 12670, Page 162, Real Property Records of Travis County, Texas.

**FIFTH EASEMENT ESTATE:** Together with a Cart Path Easement across a portion of Lot 10, Block C, BARTON CREEK SECTION G, PHASE 1, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 92, Pages 227-233, Plat Records of Travis County, Texas, as created, described and depicted in that certain Reservation of Cart Path Easement Agreement recorded in Volume 12731, Page 1223, Real Property Records of Travis County, Texas.

**PART D:** Lot 1, Block A, BEN CRENSHAW GOLF COURSE, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 88, Pages 310-312, Plat Records of Travis County, Texas, **SAVE AND EXCEPT** that certain 0.115 acre tract of land described in Exhibit "A-2" attached hereto and made a part hereof.

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**PART E:** Being all of that certain tract or parcel of land containing 21.706 acres, more or less, situated in the Patterson Moore Survey No. 84, in Travis County, Texas, said tract being more particularly described by metes and bounds shown on Exhibit "A-3" attached hereto and made a part hereof.

