

139

RESTRICTIVE COVENANT

FM 10000

[10(a) Restriction;

Lot 1, Block A, BARTON CREEK SECTION E, PHASE 1 00005340180

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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 Lot 1, Block A, BARTON CREEK SECTION E, PHASE 1, a subdivision located in Travis County, Texas, according to the map or plat (the "Plat") recorded in Book 98, Pages 194 and 195, inclusive, Plat Records of Travis County, Texas (the "Property").

B. FMP has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, inter alia, the Property and the owner or owners of property therein by permitting development under the Endangered Species Act (the "Section 10(a) Permit"). The Property must be used and developed in compliance with the Section 10(a) Permit.

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and FMP desires to impress upon the Property a restrictive covenant which will permit FMP to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a pro-rata share of such allocation against the owner or owners of Property or Units located within the Property. "Units" shall mean and refer to the total number of residential units on any final site plan approved by Travis County covering the Property.

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. **Compliance with Section 10(a) Permit.** The Property shall be used and developed in strict compliance with the requirements of the Section 10(a) Permit. The Property shall not be used in any manner which would adversely affect the existence, validity, or good standing of the Section 10(a) Permit. No clearing or any other activity shall be conducted on the Property which violates the Section 10(a) Permit and FMP shall be entitled to take any action, legal or equitable, necessary to prevent or remedy any such violation. Any cost or expense, including legal fees, incurred by FMP in enforcing its rights pursuant to this paragraph shall promptly be reimbursed by the owner of the Property.

2. **Allocation of Section 10(a) Habitat Maintenance Expenses.** FMP, its successors, assigns, or agent, shall allocate, on an annual basis, a portion of the annual Habitat Maintenance Expenses attributable to the Property (the "Annual Allocation"). The amount of the Annual Allocation shall be determined by FMP, its successors, assigns, or agent, in its sole and absolute discretion, but in no event shall the Annual Allocation exceed ELEVEN AND 00/100 DOLLARS (\$11.00) per multi-family unit. (It is anticipated that the Property will be developed for 250 multi-family units, which would yield an aggregate Annual Levy of 250 x \$11.00, which

REAL PROPERTY RECORDS
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equates to \$2,750.00) The Annual Allocation may be levied against the owner or owners of the Property, or a portion of the Annual Allocation may be levied against the owner or owners of Units within the Property (collectively, the "Annual Levy"). The method of levy shall be determined by FMP, in FMP's sole and absolute discretion. A statement of Annual Levy may be mailed to the Property owner or owners, the owner or owners of a Unit, and/or to any entity or other association created for the purpose of administering the common affairs of the Unit owners (the "Association"). In the event the Annual Levy is allocated against each Unit owner, such Annual Levy shall be equal to the Annual Allocation divided by the total number of Units.

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

3. **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 or Unit covered by the Annual Levy, which shall bind such property in the hands of the owner, and such owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the Property and Unit, except for only tax liens and all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the purchase or improvement of the Property or the Unit. To evidence the aforesaid lien, FMP, its successors, assigns, or agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Property or Unit covered by such lien and a description of the Property or Unit. Such notice shall be signed by an authorized representative of FMP, its successors or assigns, 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 above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting owner's Property or Unit by FMP, its successors or assigns, in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, FMP, its successors or assigns, 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. FMP, its successors or assigns, shall have the power to bid on the Property or Unit at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any mortgagee, FMP, its successors, assigns, or agent shall report to said mortgagee any delinquent Annual Levy.

4. **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 26th day of February, 1997 (the "Effective Date").

FMP:

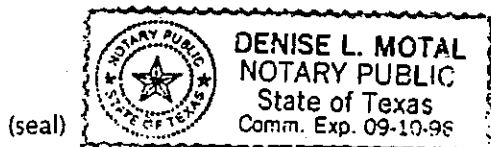
FM PROPERTIES OPERATING CO.,
a Delaware general partnership

By: [Signature]
William H. Armstrong, III, Attorney-in-Fact

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on February 26, 1997, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



Denise L. Motal
Notary Public Signature

AFTER RECORDING RETURN TO:

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

FILED
97 FEB 28 PM 4:11
DANA COBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RETURN TO: P50
HERITAGE TITLE
98 SAN JACINTO BLVD. STE. 400
AUSTIN, TEXAS 78701

GF# 518909

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

FEB 28 1997



[Signature]
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REDEIPT#: B00066194 TRANS#: B9649 DEPT: REGULAR RECORD \$13.00
CASHIER: KHFRI FILE DATE: 2/28/97 TRANS DATE: 3/3/97
PAID BY: CHECK# 3752

21

RESTRICTIVE COVENANT
[Section 10(a)]
[The Terraces at Barton Creek]

FILM CODE
00005491177

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

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 approximately 23.8 acres of land located in Travis County, Texas, described on Exhibit "A", attached to and incorporated into this document (the "Property").

B. FMP has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, inter alia, the Property and the owner or owners of property therein by permitting development without additional compliance requirements under the Endangered Species Act (the "Section 10(a) Permit"). The Property must be used and developed in compliance with the Section 10(a) Permit.

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and FMP desires to impress upon the Property a restrictive covenant which will permit FMP to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a pro-rata share of such allocation against the owner or owners of Lots located within the Property. "Lots" shall mean and refer to the total number of lots shown on the subdivision plat of the Property recorded in the Plat Records of Travis County, Texas.

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. **Compliance with Section 10(a) Permit.** The Property shall be used and developed in strict compliance with the requirements of the Section 10(a) Permit. The Property shall not be used in any manner which would adversely affect the existence, validity, or good standing of the Section 10(a) Permit. No clearing or any other activity shall be conducted on the Property which violates the Section 10(a) Permit and FMP shall be entitled to take any action, legal or equitable, necessary to prevent or remedy any such violation. Any cost or expense, including legal fees, incurred by FMP in enforcing its rights pursuant to this paragraph shall promptly be reimbursed by the owner of the Property.

2. **Allocation of Section 10(a) Habitat Maintenance Expenses.** FMP, its successors, assigns, or agent, shall allocate, on an annual basis, a portion of the annual Habitat Maintenance Expenses attributable to the Property (the "Annual Allocation"). The amount of the Annual Allocation shall be determined by FMP, its successors, assigns, or agent, in its sole and absolute discretion, but in no event shall the Annual Allocation exceed the product of TWO HUNDRED TWENTY-EIGHT AND NO/100 DOLLARS (\$228.00) multiplied by the number of Lots within the Property. FMP, its successors, assigns, or agent, shall have the right to levy a

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

portion of the Annual Allocation against the owner or owners of Lots within the Property (the "Annual Levy"). A statement of Annual Levy may be mailed to each Lot owner, and/or to any entity or other association created for the purpose of administering the common affairs of the Lot owners (the "Association"). The Annual Levy allocable against each Lot owner shall be equal to the Annual Allocation divided by the total number of Lots.

Any Annual Levy which remains unpaid thirty (30) days after the Annual Levy statement has been mailed to a Lot owner at the address for such Lot owner maintained by the Travis County Central Appraisal District and/or the Association shall be deemed delinquent. A delinquent Annual Levy shall accrue interest at a rate of twelve percent (12.0%) per annum. The first Annual Levy for each Lot shall begin to accrue on the earlier of (i) the date which is two (2) years after the date of this document; or (ii) the date construction of a residential structure is completed on such Lot.

3. **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 Lot covered by the Annual Levy allocation, which shall bind such property in the hands of the owner, and such owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the Lot, except for only tax liens and all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the improvement of the Lot. To evidence the aforesaid lien, FMP, its successors, assigns, or agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by an authorized representative of FMP, its successors or assigns, 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 above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting owner's Lot by FMP, its successors or assigns, in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, FMP, its successors or assigns, 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. FMP, its successors or assigns, shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any mortgagee, FMP, its successors, assigns, or agent shall report to said mortgagee any delinquent Annual Levy allocation.

4. **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 26th day of September, 1996.

FMP:

FM PROPERTIES OPERATING CO.,
a Delaware general partnership

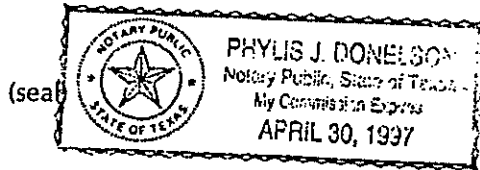
By: 

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

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on September 26, 1996, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



Phyllis J. Donelson
Notary Public Signature

AFTER RECORDING RETURN TO:

Kenneth N. Jones
Strasburger & Price, L.L.P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

DECEMBER 20, 1995 JOB NO. 67000-9017 FIELD NOTE NO. 67000-13
CLIENT NO. 60463 CLIENT NAME: FM PROPERTIES OPERATING CO. PROJECT NAME:
23.800 ACRES, BARTON CREEK, SECTION D, GRID NO. D-25

FIELD NOTES

A DESCRIPTION OF 23.800 ACRES OF LAND SITUATED IN THE ISAAC PERKINS SURVEY NO. 37, THE DRURY H. MINOR SURVEY NO. 416, AND THE B. BEBCHAM SURVEY NO. 508, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 992.199 ACRES OF LAND CONVEYED TO F.M. PROPERTIES OPERATING COMPANY BY DEED RECORDED IN VOLUME 11706, PAGE 590 OF THE REAL PROPERTY RECORDS OF SAID COUNTY AND BEING ALL OF BARTON CREEK SECTION D, AN APPROVED UNRECORDED SUBDIVISION OF SAID 992.199 ACRES, SAID 23.800 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a nail found for the northeast corner of Lot 1, Block A, The Estates of Barton Creek, Section Two-A, a subdivision whose plat is recorded in Volume 85, Pages 119B-120A of the Plat Records of said County, being on the southeast line of Rob Roy on the Creek, Section Three a subdivision whose plat is recorded in Volume 84, Pages 131D-132B of the said Plat Records;

THENCE along said southeast line being near the center of a draw, the following twenty (20) courses:

1. N 71°00'10" E, 154.43 feet to a 5/8 inch iron rod found,
2. N 35°34'12" E, 157.64 feet to a 60d nail found,
3. N 53°05'59" E, 129.37 feet to a 60d nail found,
4. N 66°41'19" E, 125.08 feet to a 1/2 inch iron rod found,
5. N 58°01'44" E, 165.50 feet to a 60d nail found,
6. N 22°14'03" E, 146.75 feet to a 60d nail found,
7. N 56°37'36" E, 214.75 feet to a 60d nail found,
8. N 37°39'54" E, 98.89 feet to a 60d nail found,
9. N 73°26'10" E, 228.64 feet to a 60d nail found,
10. N 55°45'53" E, 64.56 feet to a 60d nail found,
11. N 68°36'43" E, 139.94 feet to a 60d nail found,
12. N 63°38'02" E, 160.17 feet to a 60d nail found,
13. N 30°34'06" E, 109.05 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
14. N 04°16'43" W, 116.01 feet to a 60d nail found,

Page 1 of 3

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12781 0061

EXHIBIT "A"

15. N 39°04'53" E, 157.38 feet to a 5/8 inch iron rod found,
16. N 49°49'44" E, 116.83 feet to a concrete monument found,
17. N 19°24'07" E, 126.99 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
18. N 13°37'40" W, 116.56 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
19. N 39°44'36" E, 112.46 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found, and
20. N 14°52'44" E, 149.09 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found on the curving south R.O.W. line of Furlong Drive, a 60.00 foot wide R.O.W. for the northwest corner of the herein described 23.800 acres;

THENCE, departing the east line of said Rob Roy on the Creek, Section Three, along the south R.O.W. lines of said Furlong Drive the following three (3) courses:

1. a distance of 152.24 feet along the arc of a curve to the right whose radius is 280.79 feet, central angle is 31°03'52" and whose chord bears S 68°10'28" E, 150.36 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
2. S 52°38'32" E, 114.11 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for a point of curvature, and
3. a distance of 29.91 feet along the arc of a curve to the right whose radius is 20.00 feet, central angle is 85°41'14" and whose chord bears S 09°47'54" E, 27.20 feet to a concrete monument found on the northwest R.O.W. line of Barton Creek Boulevard, an 80.00 foot wide R.O.W. dedicated by the plat of said The Estates of Barton Creek Section Two-A;

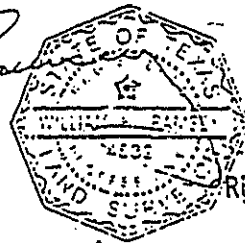
THENCE, departing the south R.O.W. lines of Furlong Drive, along the northwest R.O.W. line of Barton Creek Boulevard the following twelve (12) courses:

1. S 32°46'22" W, 103.21 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for a point of curvature,
2. a distance of 209.43 feet along the arc of a curve to the left whose radius is 789.71 feet, central angle is 15°11'42" and whose chord bears S 25°10'31" W, 208.82 feet to a p.k. nail found for a point of tangency,

3. S 17°34'40" W, 244.10 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for a point of curvature,
4. a distance of 427.53 feet along the arc of a curve to the right whose radius is 560.00 feet, central angle is 43°44'32" and whose chord bears S 39°26'56" W, 417.22 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for the point of tangency,
5. S 61°19'18" W, 168.20 feet to a p.k. nail found for a point of curvature,
6. a distance of 488.70 feet along the arc of a curve to the left whose radius is 640.00 feet, central angle is 43°45'03" and whose chord bears S 39°26'29" W, 476.91 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
7. S 17°25'00" W, 279.98 feet to a p.k. nail found for a point of curvature,
8. a distance of 405.46 feet along the arc of a curve to the right whose radius is 460.00 feet, central angle is 50°30'08" and whose chord bears S 42°49'20" W, 392.46 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found,
9. S 66°03'35" W, 200.03 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for a point of curvature,
10. a distance of 320.46 feet along the arc of a curve to the left whose radius is 540.04 feet, central angle is 33°59'59" and whose chord bears S 51°03'30" W, 315.78 feet to a p.k. nail found for the point of tangency,
11. S 34°03'30" W, 178.91 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC. RPLS 4532" found for a point of curvature, and
12. a distance of 103.84 feet along the arc of a curve to the right whose radius is 460.03 feet, central angle is 12°55'59" and whose chord bears S 40°31'30" W, 103.62 feet to a p.k. nail found for the most southerly corner hereof and the southeast corner of Lot 1, Block A of said The Estates of Barton Creek Section Two-A;

THENCE, departing the said northwest R.O.W. line of Barton Creek Boulevard, along the east line of said Lot 1, Block A, N 15°34'52" W, 668.64 feet to the POINT OF BEGINNING containing 23.800 acres of land more or less.

Will H. Rouse
12.21-95



REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12781 0063

EXHIBIT "A"

RESTRICTIVE COVENANT
[10(A) Restriction; ABC West Phase 1]

FILM CODE
00005808283

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

RECITALS:

A. Stratus is the owner of seventy-five (75) lots located in Barton Creek ABC West Phase 1, a subdivision located in Travis County, Texas, according to the map or plat recorded in Volume 101, Page 164, et. seq., Real Property Records of Travis County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Property").

B. Stratus has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, among other properties, the Property and the owner or owners of property therein by permitting development under the Endangered Species Act (the "Section 10(a) Permit").

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and Stratus desires to impress upon the Property a restrictive covenant which will permit Stratus to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a prorata share of such allocation against the owner or owners of each subdivided lot ("Lot") located within the Property.

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 Section 10(a) Habitat Maintenance Expenses. Stratus, its successors, assigns, or agent, shall allocate and levy, on an annual basis, a portion of the annual Habitat Maintenance Expenses against each Lot located within the Property (the "Annual Levy"). The amount of the Annual Levy shall be determined by Stratus, its successors, assigns, or agent, in its sole and absolute discretion, but in any event the Annual Levy against each Lot shall be uniform and in no event shall the Annual Levy exceed \$120.00 per Lot. The method of levy shall be determined by Stratus, in Stratus' sole and absolute discretion. A statement of Annual Levy shall be mailed to each Lot owner or owners and/or to any entity or other association created for the purpose of administering the common affairs of the Lot owners (the "Association"). No Annual Levy shall be assessed against a Lot until the earlier to occur of (i) the date a single family residence has been constructed on the Lot and said residence has been sold to the owner or owners who shall reside or who intend to reside thereon; or (ii) December 30, 1999.

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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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 Lot covered by the Annual Levy, 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 Lot, except for only tax liens and all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the improvement of the Lot. To evidence the lien, Stratus, its successors, assigns, or agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by an authorized representative of Stratus, its successors or assigns, 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 Lot by Stratus, its successors or assigns, in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, Stratus, its successors or assigns, 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. Stratus, its successors or assigns, shall have the power to bid on the Lot 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, Stratus, its successors, assigns, or agent shall report to said mortgagee any delinquent Annual Levy.

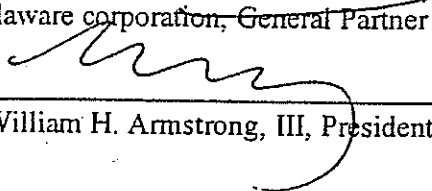
3. Severability and Construction. The provisions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires 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 31st day of September, 1998.

STRATUS:

STRATUS PROPERTIES OPERATING CO.,
a Delaware general partnership

By: STRATUS PROPERTIES INC.,
a Delaware corporation, General Partner

By: 
William H. Armstrong, III, President

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

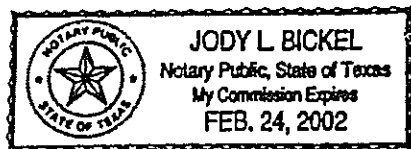
13281 0061

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on Sept. 30, 1998, by William H. Armstrong, III, President of Stratus Properties Inc., a Delaware corporation, General Partner of Stratus Properties Operating Co., a Delaware general partnership, on behalf of said corporation and partnership.

(seal)



Jody L. Bickel
Notary Public Signature

AFTER RECORDING RETURN TO:

Robert D. Burton
Armbrust Brown & Davis, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

13281 0062

EXHIBIT "A"

PROPERTY DESCRIPTION

Lots 1 - 26, inclusive; Lots 137 - 185, inclusive all in Block A, BARTON CREEK ABC WEST, PHASE 1, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 101, Pages 164-169 of the Plat Records of Travis County, Texas.

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me, and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

OCT 2 1998



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED
98 OCT -2 PH 2:51
DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

13281 0063

RECEIPT#: C00019060 TRANS#: C7560 DEPT: REGULAR RECORD \$15.00
CASHIER: DEPRI FILE DATE: 10/2/98 TRANS DATE: 10/2/98
PAID BY: CHECK# 16106

RESTRICTIVE COVENANT
[10(A) Restriction; North Rim - 15 Lots]

FILM CODE
00005451725

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 60.613 acres of land, more or less, situated in the James M. Tribble Survey No. 418 and the Drury H. Minor Survey No. 416, in Travis County, Texas, more fully described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

B. FMP has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, among other properties, the Property and the owner or owners of property therein by permitting development under the Endangered Species Act (the "Section 10(a) Permit").

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and FMP desires to impress upon the Property a restrictive covenant which will permit FMP to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a prorata share of such allocation against the owner or owners of each subdivided lot ("Lot") located within the Property.

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 Section 10(a) Habitat Maintenance Expenses.** FMP, its successors, assigns, or agent, shall allocate and levy, on an annual basis, a portion of the annual Habitat Maintenance Expenses against each Lot located within the Property (the "Annual Levy"). The amount of the Annual Levy shall be determined by FMP, its successors, assigns, or agent, in its sole and absolute discretion, but in any event the Annual Levy against each Lot shall be uniform and in no event shall the Annual Levy exceed \$291.00 per Lot. The method of levy shall be determined by FMP, in FMP's sole and absolute discretion. A statement of Annual Levy shall be mailed to each Lot owner or owners and/or to any entity or other association created for the purpose of administering the common affairs of the Lot owners (the "Association"). No Annual Levy shall be assessed against a Lot until the earlier to occur of (i) the date a single family residence has been constructed on the Lot and said residence has been sold to the owner or owners who shall reside or who intend to reside thereon; or (ii) March 29, 1998.

Any Annual Levy which remains unpaid thirty (30) days after the Annual Levy statement has been mailed to a Lot owner and/or the Association at the address for such owner maintained by the Travis County Central Appraisal District and/or the Association 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 Lot covered by the Annual Levy, 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 Lot, except for only tax liens and

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12717 2055

all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the improvement of the Lot. To evidence the lien, FMP, its successors, assigns, or agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by an authorized representative of FMP, its successors or assigns, 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 Lot by FMP, its successors or assigns, in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, FMP, its successors or assigns, 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. FMP, its successors or assigns, shall have the power to bid on the Lot 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, FMP, its successors, assigns, or 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 26th day of June, 1996.

FMP:

FM PROPERTIES OPERATING CO., a
Delaware general partnership

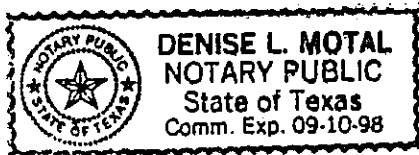
By: [Signature]
William H. Armstrong, III, Attorney-in-Fact

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on June 26, 1996, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.

(seal)



[Signature]
Notary Public Signature

AFTER RECORDING RETURN TO:

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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS
12717 2056

EXHIBIT "A"

JUNE 20, 1996 JOB NO. 67000.901 FIELD NOTE NO. 67000-24
CLIENT NO. 60463 CLIENT NAME: FM PROPERTIES OPERATING CO.
PROJECT NAME: NORTH RIM 60.613 ACRES - C.O.A. GRID C-25

FIELD NOTES

A DESCRIPTION OF 60.613 ACRES OF LAND SITUATED IN THE JAMES M. TRIBBLE SURVEY NO. 418 AND THE DRURY H. MINOR SURVEY NO. 416, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN PROPERTY DESIGNATED AS PARCEL A CONVEYED TO FM PROPERTIES OPERATING CO. BY DEED RECORDED IN VOLUME 11706, PAGE 590 OF THE REAL PROPERTY RECORDS OF SAID COUNTY, SAID 60.613 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found on the north right-of-way (R.O.W.) line of Barton Creek Boulevard, an eighty foot wide R.O.W. dedicated by plat recorded in Volume 85, Page 119A through 120B of the Plat Records of said county, being a southerly corner of that certain 17.516 acre tract of land designated as Parcel H, conveyed to FM Properties Operating Co. by said deed recorded in Volume 11706, Page 590 of the said Real Property Records;

THENCE along the said north R.O.W. line, the following seven (7) courses:

1. a distance of 285.35 feet along the arc of a curve to the left whose radius is 540.00 feet, central angle is 30°16'37" and whose chord bears S 65°55'59" W, 282.04 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
2. S 50°46'16" W, 690.13 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for a point of curvature,
3. a distance of 225.96 feet along the arc of a curve to the right whose radius is 738.95 feet, central angle is 17°31'13" and whose chord bears S 59°31'53" W, 225.08 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for a point of tangency;
4. S 68°17'30" W, 683.57 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for a point of curvature;
5. a distance of 553.71 feet along the arc of a curve to the left whose radius is 540.00 feet, central angle is 58°45'00" and whose chord bears S 38°55'00" W, 529.77 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for a point of tangency;

6. S 09°32'30" W, 255.87 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for a point of curvature, and
7. a distance of 128.69 feet along the arc of a curve to the left whose radius is 540.00 feet, central angle is 13°39'16" and whose chord bears S 02°42'51" W, 128.39 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set for the southeast corner of the herein described 60.613 acres;

THENCE, departing said north R.O.W. line, crossing said Parcel A, the following twenty four (24) courses:

1. N 84°46'34" W, 56.25 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
2. N 24°56'59" W, 421.98 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
3. N 77°16'08" W, 211.91 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a corner in the easterly line of Barton Creek ABC Midsection, a proposed subdivision of said Parcel A,
4. N 04°28'24" W, continuing to cross said Parcel A along the said easterly line, 211.54 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
5. N 64°14'21" W, 187.98 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
6. N 30°27'20" W, 290.02 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
7. N 48°06'17" E, 49.72 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
8. N 00°16'23" W, 476.78 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
9. N 44°52'20" W, 164.91 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
10. S 32°49'40" W, 84.51 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
11. S 64°00'55" W, 70.24 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
12. N 90°00'00" W, 67.82 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,

13. N 65°03'00" W, 61.90 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
14. N 39°06'22" W, 72.30 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
15. N 23°13'12" W, 189.38 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
16. N 18°39'56" W, 196.26 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
17. N 06°24'25" W, 267.63 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
18. N 00°23'49" W, 70.11 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
19. N 22°13'12" E, departing said easterly line, 222.13 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
20. N 43°08'57" E, 159.38 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
21. N 65°13'50" E, 42.68 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
22. N 82°02'06" E, 60.84 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set,
23. S 87°30'29" E, 62.56 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" set, and
24. N 83°57'03" E, 295.09 feet to a point in the centerline of Barton Creek being on a southwest line of Barton Valley, a subdivision whose plat is recorded in Volume 69, Page 3 of the said Plat Records;

THENCE along the centerline of Barton Creek, being the southerly lines of said Barton Valley and Fortune Valley, a subdivision whose plat is recorded in Volume 69, Page 4 of the said Plat Records, the following eleven (11) courses:

1. S 04°09'48" E, 196.04 feet to a point,
2. S 30°29'48" E, 301.83 feet to a point,
3. S 28°42'48" E, 299.93 feet to a point,
4. S 31°22'48" E, 301.45 feet to a point,
5. S 32°53'48" E, 131.38 feet to a point,

6. S 47°07'48" E, 216.62 feet to a point,
7. S 67°47'48" E, 111.15 feet to a point,
8. S 82°24'48" E, 230.36 feet to a point,
9. N 73°37'12" E, 334.47 feet to a point,
10. N 59°06'11" E, 293.06 feet to a point, and
11. N 43°51'11" E, 179.79 feet to a point,

THENCE, departing the said centerline of Barton Creek, being a southerly line of said Fortunes Valley, crossing said Parcel A S 77°33'05" E, 224.47 feet pass a 60d nail found for the southwest corner of said 17.516 acre tract, in all, a distance of 347.63 feet along the southerly line of said 17.516 acre tract to a 60d nail found for a corner;

THENCE, continuing along southerly lines of said 17.516 acre tract, the following two (2) courses:

1. N 78°43'27" E, 591.63 feet to an 80d nail found, and
2. S 09°53'59" E, 55.67 feet to the POINT OF BEGINNING containing 60.613 acres of land more or less.

STATE OF TEXAS:

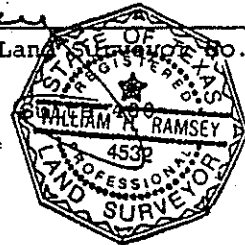
KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS:

That I, William H. Ramsey, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL AT AUSTIN, Travis County, Texas, this the 20th day of June, 1996 A.D.

William H. Ramsey
 Registered Professional Land Surveyor No. 4532
 Rust Lichliter/Jameson
 811 Barton Springs Road,
 Austin, Texas 78704-1164



REAL PROPERTY RECORDS
 TRAVIS COUNTY, TEXAS

Page 4 of 4

12717 2060

FILED

96 JUN 27 PM 4: 23

RECORDS CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS

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

JUN 27 1996



David B. Johnson
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12717 2061

RECEIPT: A00037299 TRANS: A2360 DEPT: REGULAR RECORD \$21.00
CASHIER: BATH FILE DATE: 6/27/96 TRANS DATE: 6/28/96
PAID BY: CREDIT 5250

RESTRICTIVE COVENANT
[10(a) Restriction; Barton Creek Governor's Hill]

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 approximately 31 acres located in Travis County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Property").

B. FMP has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, among other properties, the Property and the owner or owners of property therein by permitting development under the Endangered Species Act (the "Section 10(a) Permit").

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and FMP desires to impress upon the Property a restrictive covenant which will permit FMP to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a prorata share of such allocation against the owner or owners of each subdivided lot, condominium, townhome, villa or other residential dwelling unit (a "Unit") located within the Property.

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. **Compliance with Section 10(a) Permit.** The Property shall be used and developed in strict compliance with the requirements of the Section 10(a) Permit. The Property shall not be used in any manner which would adversely affect the existence, validity, or good standing of the Section 10(a) Permit. No clearing or any other activity shall be conducted on the Property which violates the Section 10(a) Permit and FMP shall be entitled to take any action, legal or equitable, necessary to prevent or remedy any such violation. Any cost or expense, including legal fees, incurred by FMP in enforcing its rights pursuant to this paragraph shall promptly be reimbursed by the owner of the Property. The owner of the Property shall indemnify and hold FMP harmless from any claims or losses resulting from violations of the Section 10(a) Permit occurring on the Property.

2. **Allocation of Section 10(a) Habitat Maintenance Expenses.** FMP, its successors, assigns, or agent, shall allocate and levy, on an annual basis, a portion of the annual Habitat Maintenance Expenses against each Unit located within the Property (the "Annual Levy"). The amount of the Annual Levy shall be determined by FMP, its successors, assigns, or agent, in its sole and absolute discretion, but in any event the Annual Levy against each Unit shall be uniform and in no event shall the Annual Levy exceed \$200.00 per Unit. The method of levy shall be determined by FMP, in FMP's sole and absolute discretion. A statement of Annual Levy shall be mailed to each Unit owner or owners and/or to any entity or other association created for the purpose of administering the common affairs of the Unit owners (the "Association"). No Annual Levy shall be assessed against a Unit until the earlier to occur of (i) the date the Unit has been constructed and sold to the owner or owners who shall reside or who intend to reside thereon; or (ii) the date which is two (2) years from the Effective Date of this Restrictive Covenant.

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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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3. **Assessment Lien and Foreclosure.** A delinquent Annual Levy (together with interest as provided in Paragraph 2 above, and the cost of collection, including attorney's fees as provided for herein) shall become a continuing lien and charge on the Unit covered by the Annual Levy, 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 Unit, except for only tax liens and all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the improvement of the Unit. To evidence the lien, FMP, its successors, assigns, or agent may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Unit covered by such lien and a description of the Unit. Such notice shall be signed by an authorized representative of FMP, its successors or assigns, 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 Unit by FMP, its successors or assigns, in like manner as a mortgage on real property. Subsequent to the recording of a notice of assessment lien as provided above, FMP, its successors or assigns, 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. FMP, its successors or assigns, shall have the power to bid on the Unit 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, FMP, its successors, assigns, or agent shall report to said mortgagee any delinquent Annual Levy.

4. **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 as of the 23rd day of May, 1997 (the "Effective Date").

FMP:

FM PROPERTIES OPERATING CO.,
a Delaware general partnership

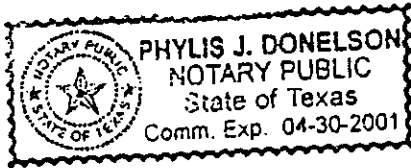
By: 

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

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on 10.14.97, 1997, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



Notary Public Signature

AFTER RECORDING RETURN TO:

Kenneth N. Jones
Armbrust Brown & Davis, L.L.P.
100 Congress Avenue, Suite 1350
Austin, Texas 78791

RETURN TO: PHYLLIS DONELSON
HERITAGE TITLE
98 SAN JACINTO BLVD. STE. 400
AUSTIN, TEXAS 78701
GF# 6-20307

EXHIBIT "A"

DECEMBER 24, 1996 JOB NO. 67000.901 FIELD NOTE NO. 67000-3781
CLIENT NO. 60463 CLIENT NAME: FM PROPERTIES OPERATING CO.
PROJECT NAME: GOVERNORS HILL - C.O.A. GRID NO. C-25

FIELD NOTES

A DESCRIPTION OF 31.394 ACRES OF LAND SITUATED IN THE DRURY H. MINOR SURVEY NO. 416, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL A CONVEYED TO FM PROPERTIES OPERATING COMPANY BY DEED RECORDED IN VOLUME 11706, PAGE 590 OF THE REAL PROPERTY RECORDS OF SAID COUNTY, SAID 31.394 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod found on the north right-of-way (R.O.W.) line of Barton Creek Boulevard, an 80.00 foot wide R.O.W. dedicated by plat recorded in Volume 85, Pages 1198-120A of the Plat Records of said County, for a point of curvature and the southeast corner of WCID No. 19 Water Treatment Plant, Phase 1, a subdivision whose plat is recorded in Volume 91, Pages 18 and 19 of the said Plat Records;

THENCE along the east and north lines of said WCID No. 19 Water Treatment Plant, Phase 1, the following eleven (11) courses:

1. a distance of 39.27 feet along the arc of a curve to the right whose radius is 25.00 feet, central angle is 90°00'00" and whose chord bears N 53°44'11" W, 35.36 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found,
2. N 08°44'11" W, 187.57 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found for a point of curvature,
3. a distance of 407.45 feet along the arc of a curve to the left whose radius is 863.38 feet, central angle is 27°02'21" and whose chord bears N 22°15'21" W, 403.68 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found for the point of tangency,
4. N 35°46'32" W, 113.62 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found for a point of curvature,
5. a distance of 66.58 feet along the arc of a curve to the left whose radius is 98.32 feet, central angle is 38°48'14" and whose chord bears N 03°46'44" W, 65.32 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found for a point of reverse curvature,

6. a distance of 39.13 feet along the arc of a curve to the right whose radius is 133.92 feet, central angle is $12^{\circ}11'24''$ and whose chord bears $N 17^{\circ}05'09'' W$, 39.06 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found,
7. $N 10^{\circ}59'27'' W$, 45.60 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found,
8. $N 22^{\circ}44'57'' E$, 197.42 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found,
9. $N 67^{\circ}15'03'' W$, 169.43 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found,
10. $S 49^{\circ}56'22'' W$, 60.30 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found, and
11. $S 85^{\circ}46'50'' W$, 64.59 feet to a 5/8 inch iron rod with plastic cap marked "L/JA INC RPLS 4532" found on the east R.O.W. line of Chalk Knoll Lane, a variable width R.O.W. to be dedicated by plat of Barton Creek ABC Midsection, a proposed subdivision of said Parcel A;

THENCE, departing the north lines of said WCID No. 19 Water Treatment Plant, Phase 1, along the east R.O.W. line of said Chalk Knoll Lane, the following two (2) courses:

1. a distance of 112.88 feet along the arc of a curve to the right whose radius is 400.00 feet, central angle is $16^{\circ}10'08''$ and whose chord bears $N 09^{\circ}24'48'' E$, 112.51 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for the point of tangency, and
2. $N 17^{\circ}29'52'' E$, 30.49 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a point of curvature;

THENCE, departing said east R.O.W. line, along southeasterly lines of said Barton Creek ABC Midsection, the following eight (8) courses:

1. a distance of 23.56 feet along the arc of a curve to the right whose radius is 15.00 feet, central angle is $90^{\circ}00'00''$ and whose chord bears $N 62^{\circ}31'21'' E$, 21.21 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for the point of tangency,
2. $S 72^{\circ}28'39'' E$, 27.36 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a point of curvature,

3. a distance of 103.40 feet along the arc of a curve to the left whose radius is 305.00 feet, central angle is $56^{\circ}50'55''$ and whose chord bears $N 79^{\circ}05'54'' E$, 195.16 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a point of reverse curvature,
4. a distance of 22.47 feet along the arc of a curve to the right whose radius is 25.00 feet, central angle is $51^{\circ}30'30''$ and whose chord bears $N 76^{\circ}25'41'' E$, 21.73 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a point of reverse curvature,
5. a distance of 99.81 feet along the arc of a curve to the left whose radius is 60.00 feet, central angle is $95^{\circ}18'30''$ and whose chord bears $N 54^{\circ}31'41'' E$, 88.69 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
6. $S 41^{\circ}09'25'' E$, 245.84 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
7. $N 48^{\circ}48'52'' E$, 467.26 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found, and
8. $N 05^{\circ}30'21'' E$, 308.50 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a southwest corner of that certain 60.613 acres conveyed to John S. Lloyd by deed recorded in Volume 12721, Page 869 of the said Real Property Records;

THENCE, departing said southeasterly lines, crossing said Parcel A along the southwesterly lines of said 60.613 acres, the following three (3) courses:

1. $S 77^{\circ}16'08'' E$, 211.91 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,
2. $S 24^{\circ}56'59'' E$, 421.98 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found, and
3. $S 84^{\circ}46'34'' E$, 56.25 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found on a westerly R.O.W. line of said Barton Creek Boulevard;

THENCE, departing said southwesterly lines along west, northwest and north R.O.W. lines of said Barton Creek Boulevard, the following six (6) courses:

1. a distance of 109.32 feet along the arc of a curve to the left whose radius is 540.00 feet, central angle is $11^{\circ}35'55''$ and whose chord bears $S 09^{\circ}54'44'' E$, 109.13 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found,

2. S 15°40'34" E, 293.57 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for a point of curvature,
3. a distance of 471.73 feet along the arc of a curve to the right whose radius is 460.00 feet, central angle is 58°45'22" and whose chord bears S 13°44'44" W, 451.33 feet to a 5/8 inch iron rod with plastic cap marked "RUST E&I RPLS 4532" found for the point of tangency,
4. S 43°07'25" W, 314.66 feet to a PK nail with plastic cap marked "RUST E&I RPLS 4532" set for a point of curvature,
5. a distance of 306.21 feet along the arc of a curve to the right whose radius is 460.00 feet, central angle is 38°08'24" and whose chord bears S 62°11'37" W, 300.59 feet to a PK nail with plastic cap marked "RUST E&I RPLS 4532" set for the point of tangency, and
6. S 81°15'49" W, 364.10 feet to the POINT OF BEGINNING containing 31.394 acres of land, more or less.

STATE OF TEXAS:

KNOW ALL MEN BY THESE PRESENTS:

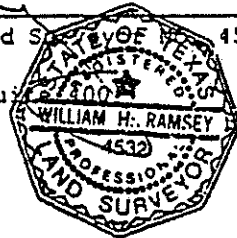
COUNTY OF TRAVIS:

That I, William H. Ramsey, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL AT AUSTIN, Travis County, Texas, this the 12th day of March, 1998 A.D.

William H. Ramsey

Registered Professional Land Surveyor
Rust Lichliter/Jameson
811 Barton Springs Road, Suite 100
Austin, Texas 78704-1164



FILED

97 MAY 27 PM 3:31

DARRA DEE AUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF TRAVIS

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

MAY 27 1997



Darra Dee Auvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDER'S MEMORANDUM-At the time of
recording this instrument was found to be inadequate
for the best photographic reproduction, because of
illegibility, carbon or photo copy, discolored paper,
etc. All blockouts, additions and changes were present
at the time the instrument was filed and recorded.

TRAVIS COUNTY, TEXAS
CORR 00803

12942 0703

RECORDED: 5/27/97 TRAVIS COUNTY, TEXAS
INDEXED: 5/27/97 TRAVIS COUNTY, TEXAS
FILED: 5/27/97 TRAVIS COUNTY, TEXAS
RECEIVED: 5/27/97 TRAVIS COUNTY, TEXAS