

**FIRST AMENDMENT TO
DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS,
AND RESTRICTIONS**

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**FIRST AMENDMENT TO DEVELOPMENT AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE I**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase I (the "Amendment") is made by **STRATUS PROPERTIES OPERATING CO.**, a Delaware general partnership (the "Declarant"), and is as follows:

RECITALS:

A. Declarant, recorded that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase I recorded in Volume 13281, Page 0035 et seq., of the Real Property Records of Travis County, Texas (the "Declaration") which relates to certain real property (the "Property").

B. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase I, dated May 1, 1998, recorded in Volume 13174, Page 636, et seq., of the Real Property Records of Travis County, Texas, the Property is subject to the Master Declaration of Covenants, Conditions and Restrictions of record in Volume 11324, Page 707 of the Real Property Records of Travis County, Texas (the "Master Declaration").

C. Pursuant to Section 8.03 of the Declaration, the Declaration may be amended by recording in the Real Property Records of Travis County, Texas an instrument executed and acknowledged by the Declarant, acting alone.

NOW, THEREFORE, the undersigned Declarant hereby declares and certifies and hereby amends and modifies the Declaration, as follows:

1. Article II, Section 2.01 is hereby deleted in its entirety and the following is substituted in its place:

2.01. General Restrictions.

- (a) The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one (1) detached single family residence which shall not exceed the following height limitations and shall meet the following criteria:
- (i) Unless specifically excepted in item (ii) below, the maximum building height shall be no more than thirty-eight feet (38') measured according to the following definition: the vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. In addition, the height of any cave on any structure shall not exceed thirty-five feet (35') above the natural grade at any point on the exterior wall of the residence.

- (ii) The maximum building height permitted for Lots 150 through 155, 168 through 169, and 173 through 176, inclusive, shall be determined on a per lot basis by the Master Architectural Control Committee in conjunction with the Committee's review of a preliminary site plan and preliminary house plans pertaining to each Lot. In determining the maximum height which will be permitted on each Lot, subject to this Section 2.01(ii), the Master Architectural Control Committee shall take into consideration, among other things, topographic, siting and design conditions and constraints applicable to such Lot.
- (iii) That portion of the foundation visible from the exterior of the structure must be concealed by a combination of (a) extending the exterior stone or stucco to within twelve inches (12") of the finished grade and (b) constructing terraced planter boxes, which shall be constructed of the same masonry material as the structure and designed so as to minimize the visual impact of the structure's mass and height. The 12" maximum exposed foundation shall be underpinned.

(b) Each Lot must contain a private garage for not fewer than two (2) automobiles.

(c) A maximum of two garage bays constructed on a Lot may face a street provided the garage bays are: (i) recessed at least ten (10) feet from the nearest front elevation of the residence located on such Lot; or (ii) obscured by a porte cohere which may not extend more than five (5) feet in front of any heated or cooled portion of the residence located on such Lot.

(d) Any residence constructed on any Lot must have a floor area of not less than 2,500 square feet, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages. The Master Architectural Control Committee may refuse to approve plans for the construction of any residence if, in the sole and exclusive opinion of the Master Architectural Control Committee, the elevation and/or floor plan of the residence reflected on such plans would be similar to a residence previously approved within the Property by the Master Architectural Control Committee.

(e) Unless otherwise expressly approved by the Master Architectural Control Committee, the exterior walls of any residence shall consist of one hundred percent (100%) stone, brick or stucco constructed in strict compliance with the requirements of the Architectural Guidelines. The Master Architectural Control Committee shall have the authority to permit the use of Hardiplank siding in specific circumstances where the Master Architectural Control Committee determines the limited use of Hardiplank siding to be appropriate and consistent with the design requirements set forth in the Architectural Guidelines.

(f) All roofs shall be constructed of clay or concrete tile, non-reflective metal, slate, or 30 year warranty (or greater) composition asphalt shingles. All roof materials shall be a muted earthtone color as approved by the Master Architectural Control Committee. The maximum allowable roof pitch shall be 9 in 12 and the minimum allowable roof pitch shall be 6 in 12.

(g) With the exception of corner Lots, i.e., Lots located adjacent to two (2) streets: (i) no building or other Improvement shall be located nearer than twenty (20) feet from the front Lot line and (ii) no building or other Improvement (except fences) shall be located nearer than five (5) feet from any side Lot line, fifteen (15) feet from any rear Lot line without the express prior written approval of the Master Architectural Control Committee. In addition to the individual five (5) foot side Lot line setbacks set forth

in the preceding sentence, the two (2) side yard setbacks for each Lot shall total not less than fifteen (15) feet. Notwithstanding any provision in this Section 2.01 (g) to the contrary, for each corner Lot, the front yard setback of twenty (20) feet shall apply to the street adjacent and parallel to the front door of the residence constructed on such Lot, and a fifteen (15) foot setback shall apply to the other street. For the purpose of the restrictions set forth in this Section 2.01 (g), eaves, steps, and open porches shall not be considered as part of the building; provided, however, that this sentence shall not be construed to permit any portion of any construction or building on any Lot to encroach upon another Lot or property.

(h) Only wood, wood clad, or high quality vinyl windows shall be permitted and all windows on each residence shall have a consistent design throughout the residence and shall strictly comply with the requirements of the Architectural Guidelines.

(i) The design, construction materials, and location of (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the Master Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines. Driveways shall be a minimum of twelve (12) feet in width at their narrowest point. One (1) driveway curb cut shall be permitted per residence, with the exception that Lots 10, 24, 141, 142, 149, 159, 163, 164, 172, and 181 may have one (1) curb cut on each of the two streets fronting the Lot to allow circular driveways. Two (2) driveway curb cuts shall also be permitted on Lot 176. Single driveways shall be accessed from the street of lowest classification, e.g., a cul-de-sac is the lowest classification street within the Property. No asphalt driveways shall be permitted. Colored and/or textured concrete shall be permitted only if approved in advance by the Master Architectural Control Committee. Driveways must be located a minimum of five (5) feet from the side yard lot line and there shall be at least a fifteen (15) foot buffer between driveways on adjoining Lots which shall be landscaped to screen one driveway from the other except as may be otherwise expressly approved in writing by the Master Architectural Control Committee. The Master Architectural Control Committee shall establish design and materials requirements for all driveway culverts to insure that they are consistent in appearance throughout the Property.

(j) Fences facing any street shall be constructed of wrought iron, including but not limited to the rear of Lots 17 through 21, inclusive, and the south property line of Lot 1 and Lot 185. All other fences may be constructed of wood provided a landscape buffer is installed adjacent thereto as approved by the Master Architectural Control Committee. No fences shall be permitted in the front yard of any Lot. Fences must not exceed six (6) feet in height, and shall not be set back at least ten (10) feet from the front of the residence constructed on such Lot. Any other materials, height, or location of any fences must be approved in advance by the Master Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines.

(k) The second story floor area of any residence located on a Lot shall not exceed one hundred percent (100%) of the heated or cooled first floor area of the residence. In addition, all two-story interior spaces, irrespective of whether such areas are heated and cooled, shall be included in the second floor area for the purpose of determining compliance with this Section 2.01(k).

(l) No tree with an eight (8) inch "diameter breast height" ("DBH") or greater may be removed without the advance written approval of the Master Architectural Control Committee.

(m) No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot; provided that, in connection with its development of the Property and sale of Lots, Developer shall have the right to maintain model homes, temporary or permanent sales and marketing

centers and offices, and conduct open houses or other marketing events, to which the general public may be invited.

(n) No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies, or for a carport or other automobile storage open on more than one side.

(o) No Lot may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but Lots may be leased for single family residential purposes for a minimum term of six (6) months; provided that any lease agreement must be in writing and must be made specifically subject to this Declaration.

(p) The front yard of each Lot and the side yard of each corner Lot shall be sodded prior to occupancy with Tiff Bermuda. An irrigation system shall be installed in the front yard of each Lot prior to occupancy. The design and installation methodology of each irrigation system must be approved in advance by the Master Architectural Control Committee.

(q) Lots 6 and 7 shall have a minimum finished floor elevation ("FFE") of 783.5 feet above mean sea level. Lots 144 through 147, 150 through 155 and 173 through 176 will require the use of pressure wastewater service and the installation of private grinder pumps, which pumps shall be maintained by the Owner of the Lot on which such grinder pump has been installed. The Owner of each Lot shall be the sole party responsible for determining the minimum FFE necessary to utilize gravity flow wastewater service for such Lot. Declarant anticipates that certain Lots identified in the chart below, will require a minimum FFE above mean sea level to enable to utilization of gravity flow wastewater service:

Lot #	FFE	Lot #	FFE
Lot 5	782.5	Lot 143	777.4
Lot 6	782.5	Lot 148	777.4
Lot 7	782.5	Lot 149	777.4
Lot 8	788.0	Lot 156	776.4
Lot 9	788.0	Lot 159	783.0
Lot 12	791.5	Lot 160	780.0
Lot 13	791.5	Lot 161	780.0
Lot 14	792.2	Lot 162	790.0
Lot 15	792.2	Lot 163	790.0
Lot 137	778.0	Lot 168	780.0
Lot 138	778.0	Lot 169	780.0
Lot 139	778.0	Lot 170	780.2
Lot 140	778.0	Lot 171	780.2
Lot 141	785.0	Lot 172	780.4
Lot 142	777.4	Lot 177	781.6

Declarant makes no representation or warranty with respect to the accuracy of the minimum FFE estimates, or the availability of gravity flow wastewater service in the event an Owner complies with such estimates. Each Owner of a Lot is solely responsible for determining the minimum FFE necessary to obtain gravity flow wastewater service. Each Owner is advised to consult third party consultants for the purpose of calculating the minimum FFE applicable to such Owner's Lot.

(r) All signage shall comply with sign guidelines adopted by the Association or Master Architectural Control Committee. The Association and the Master Architectural Control Committee reserve the right to amend or modify the sign guidelines from time to time.

(s) Sport courts and play equipment are prohibited from the front yard of any Lot and any street located within the Property. Sport courts and play equipment may be installed in the rear yard of a Lot provided such improvements are approved in advance by the Master Architectural Control Committee prior to installation, which approval may be conditioned upon the installation of appropriate screening.

(t) House construction may occur only between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturday. There shall be no construction allowed on Sunday or on legal holidays. During construction, all Lots shall be kept in a tidy manner; no dumping, burying or burning of trash shall be allowed. No debris from any Lot shall be stored or permitted to accumulate on any other Lot. During construction on any Lot, the Owner of such Lot shall be responsible for installing debris, construction, and/or silt fencing in accordance with guidelines adopted by the Master Architectural Control Committee. The operation of radios, televisions, or other entertainment devices by personnel during construction on any Lot shall be permitted, provided that the volume and sounds produced by such devices shall be inaudible from any adjacent Lot on which a residence has been constructed.

(u) Air conditioning and/or heating units installed on any Lot shall be screened from view from adjacent property by a wall constructed of the same masonry material as the residence or landscaping. The design and materials of the masonry wall and/or landscaping shall be approved in advance of construction or installation by the Master Architectural Committee.

2. Article IX, Section 9.02 is hereby deleted in its entirety and the following is substituted in its place:

9.02. **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw land from the Property and remove and exclude from the burden of this Declaration: (i) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; (ii) any portion of the Property or Development included in a Plat even if Declarant does not own all Lot(s) described on the Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat; or (iii) Lot 197, Block A, provided Declarant owns such lot. Upon any such withdrawal this Declaration and the covenants conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the volume and initial page number of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

3. Any capitalized items used and not otherwise defined herein shall have the meanings set forth in the Declaration or Master Declaration. Unless expressly amended by this First Amendment, all other terms and provisions of the Declaration remain in full force and effect as written.

Executed to be effective this 16th day of March, 1999.

DECLARANT:

STRATUS PROPERTIES OPERATING CO.,
a Delaware general partnership

By: **Stratus Properties, Inc.,**
a Delaware corporation,
its General Partner

By: *John Baker*
John Baker, Vice-President, Accounting

THE STATE OF TEXAS

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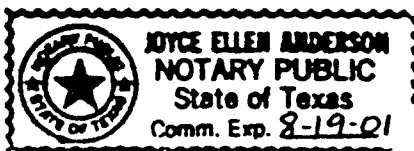
COUNTY OF TRAVIS

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This instrument was acknowledged before me on March 16, 1999, by John Baker, Vice-President, Accounting, for Stratus Properties, Inc., a Delaware corporation, General Partner of Stratus Properties Operating Co., a Delaware general partnership, on behalf of said partnership.

(seal)



Joyce Ellen Anderson
Notary Public Signature

AFTER RECORDING, RETURN TO:

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

FILED

99 MAR 16 PM 2:51

CLERK OF COURTS
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
named RECORDS of Travis County, Texas, on

MAR 16 1999



Robert D. Burton
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECEIPT#: A00147861 TRASH#: A1768 DEPT: REGULAR RECORD \$19.00
CASHIER: MOTUE FILE DATE: 3/16/99 TRASH DATE: 3/16/99
PAID BY: CHECK# 17668