

AMENDMENT TO MASTER DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

FILM CODE

00005540177

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This Amendment to Master Declaration of Covenants, Conditions and Restrictions (the "Second Amendment") is made by **BARTON CREEK PROPERTIES OWNERS ASSOCIATION, INC.**, a Texas non-profit corporation (the "Master Association") and **FM PROPERTIES OPERATING CO.**, a Delaware general partnership ("Declarant"), and is as follows:

RECITALS:

A. Barton Creek Properties Inc., a Delaware corporation ("BCP"), recorded that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990, recorded in Volume 11324, Page 0707 of the Real Property Records of Travis County, Texas (the "Master Declaration"), which relates to certain real property (the "Property") therein described.

B. Pursuant to that certain Assignment of Rights, dated June 11, 1992, BCP assigned all its rights and interests under the Master Declaration, including the rights of Declarant, to FM Properties Operating Co., a Delaware general partnership.

C. Pursuant to Section 8.03 of the Master Declaration, the Master Declaration may be amended by recording in the Real Property Records of Travis County, Texas an instrument executed and acknowledged by the President and Secretary of the Master Association setting forth the amendment and certifying that such amendment has been approved by Members entitled to cast at least seventy percent (70%) of the number of the votes entitled to be cast by Members of the Master Association.

D. The following amendments have been approved by Declarant as a Member of the Master Association entitled to cast at least seventy percent (70%) of the total number of votes entitled to be cast by Members of the Master Association.

E. The President and Secretary of the Master Association have executed and caused this instrument to be recorded to effectuate the following amendments to the Master Declaration.

NOW THEREFORE, the undersigned President and Secretary of the Master Association hereby declare and certify that the following amendments and modifications to the Master Declaration have been duly approved by Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by the Members of the Master Association:

1. Article V, Section 5.05 of the Master Declaration shall be amended by adding provision:

D. In addition to the allocation of Assessment Units described in Section 5.05.B., Declarant shall be entitled to allocate an annual levy (the "Annual Levy") against a Commercial Lot in the notice filed by Declarant pursuant to Section 10.05 for the Development Area within which such Commercial Lot is located. Establishment of an Annual Levy pursuant to the foregoing sentence shall be in lieu of an allocation of Assessment Units pursuant to Section 5.05.B. At the beginning of each calendar year the Annual Levy then in effect shall be increased by a percentage amount equal to the percentage of

increase, if any, in the cost of living index at the commencement of the calendar year, over and above the cost of living index at the commencement of the immediately preceding calendar year. For purposes of this Section 5.05.D.: (a) increases in the cost of living index shall be measured by the U.S. Department of Labor Consumer Price Index for All Urban Consumers, Dallas-Fort Worth, Texas Average, all items figure 1982-1984 = 100 as published by the Bureau of Labor Statistics of the United States Department of Labor; and (b) the figures for purposes of calculating Annual Levy increases hereunder shall be the last figures published prior to the applicable measurement dates. If any of the following events occur, 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 a new index in computing any rent increases hereunder, to-wit: (a) if 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; (b) if 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 (c) if the Consumer Price Index for all Urban Consumers, Dallas-Fort Worth, Texas Average, shall be discontinued for any reason. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information, the Board shall thereafter accept and use such other index or comparable statistics on the cost of living for Travis County, Texas, as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority. The Annual Levy shall be secured by a lien against the Commercial Lot and collectible in the same manner as provided for Assessments in the Master Declaration.

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

Executed on this 26<sup>th</sup> day of February, 1997.

**MASTER ASSOCIATION:**

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

By: David Ruehlman

David Ruehlman, President

By: Angie Thelemans

Angie Thelemans, Secretary

**DECLARANT:**

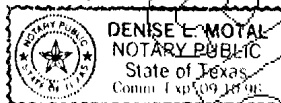
**FM PROPERTIES OPERATING CO.,**  
a Delaware general partnership

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 David Ruehlman, President of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



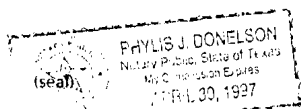
(seal)

Denise L. Motal  
Notary Public Signature

THE STATE OF TEXAS §

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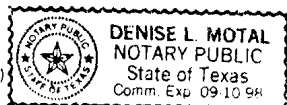
This instrument was acknowledged before me on February 26, 1997, by Angie Thielemans, Secretary of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



THE STATE OF TEXAS §

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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.



(seal)

Denise L. Motal  
Notary Public Signature

FILED

97 FEB 28 PM 4:10

DANA L. LEAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

AFTER RECORDING RETURN TO:

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

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

QF# 518907

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

FEB 28 1997



*Dana L. Leauvoir*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

102414 1/28/97 10:00 10:00 10:00

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12881 1135

RECEIPT#: 000066194 TRANS#: 89646 DEPT: REGULAR RECORD \$15.00  
CASHIER: KHFRI FILE DATE: 2/28/97 TRANS DATE: 3/3/97  
PAID BY: CHECK# 3752