

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

FILM CODE
00005808282

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

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

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

RECITALS

A. The Declarant is the owner of all lots located in BARTON CREEK ABC WEST, PHASE I, a subdivision in Travis County, Texas, according to the map or plat (the "Plat") thereof recorded in Volume 101, Page 164, Plat Records of Travis County, Texas (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 15, 1998, recorded in Volume 13174, Page 636, 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. The Master Declaration permits the Declarant to file Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Declaration, which shall be in addition to the covenants, conditions, and restrictions of the Master Declaration.

D. Declarant desires to create upon the Property a residential community and carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

E. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property, and each owner thereof, which shall be in addition to the covenants, conditions, and restrictions set forth in the Master Declaration.

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 and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter 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 and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration.

13281 0035

ARTICLE I

DEFINITIONS

1.01. **Defined Terms.** Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

"Architectural Guidelines" shall mean the architectural guidelines adopted by the Master Architectural Control Committee pursuant to this Declaration and as authorized by the Master Declaration, as such architectural guidelines may be amended, modified, or restated from time to time.

"Assessment" or "Assessments" shall mean assessments as may be levied by the Association under the terms and provisions of this Declaration and shall include regular, special common areas and special assessments.

"Association" shall mean and refer to The Barton Creek ABC West Community, Inc., a Texas non-profit corporation.

"Association Restrictions" shall mean this Declaration as the same may be amended from time to time, together with the Articles, Bylaws, and Association Rules, from time to time in effect.

"Association Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 3.04(c) hereof as may be amended from time to time.

"Articles" shall mean the Articles of Incorporation of The Barton Creek ABC West Community, Inc., to be filed in the office of the Secretary of State of the State of Texas, as the same may be amended from time to time.

"Bylaws" shall mean the bylaws of the Association as adopted by the Board and as amended from time to time.

"Board" shall mean and refer to the Board of Directors of the Association.

"Common Area" shall mean and refer to all real property and any interest therein, including Improvements located thereon, which is designated by Declarant as common area which benefits the Development, and is conveyed to the Association or is otherwise held by Declarant for the benefit of the Owners. The Common Area shall include all areas that shall be or have been dedicated to all public authorities but not yet accepted by such authorities. The Common Area shall also include the "Private Roadway", "Security Facilities" and "Lateral Support", such terms are defined in that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek Section E, Phase 1, recorded in Volume 12860, Page 422, Real Property Records of Travis County, Texas. The Barton Creek Property Owners Association is currently obligated to provide maintenance to the Private Roadway, Security Facilities and Lateral Support, which responsibility shall be assigned to the Association at such time as the Articles of Incorporation for the Association have been filed with the Texas Secretary of State. The Common Area shall be for the common use and enjoyment of the Owners. Common Area may be designated by Declarant from time to time and at any time.

"Declarant" shall mean Stratus Properties Operating Co., a Delaware general partnership, its successors or assigns; provided that any assignment(s) of the rights of Stratus Properties Operating Co.

as Declarant, must be expressly set forth in writing and the mere conveyance of a portion or all of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

"Declaration" shall mean this instrument as it may be amended from time to time.

"Developer" shall mean and refer to Oly Stratus West I. G.P., a Texas general partnership, its successors or assigns.

"Improvements" shall mean every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, other utilities, or otherwise.

"Lot" or "Lots" shall mean one or more of the subdivided lots within the Property other than Common Areas and Special Common Areas.

"Master Architectural Control Committee" shall mean the committee created pursuant to the Master Declaration to establish Architectural Guidelines, to review and approve plans for the construction of Improvements upon the Property, and to carry out its duties as set forth in the Declaration and the Master Declaration.

"Master Association" shall mean and refer to the Barton Creek Property Owners Association, Inc., a Texas non-profit corporation.

"Master Board" shall mean and refer to the Board of Directors of the Master Association.

"Master Common Area" shall mean and refer to those areas within the Property which have been or may in the future be conveyed to, or leased by, the Master Association, including, without limitation, all private streets and easements for landscape, drainage, irrigation, fence or related purposes.

"Master Declaration" shall mean that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990, of record in Volume 11324, Page 707 of the Real Property Records of Travis County, Texas, filed against the Property and other real estate in Travis County, Texas, as such declaration may be modified, amended, or restated from time to time.

"Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Property given to secure the payment of a debt.

"Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage(s).

"Owner" or "Owners" shall mean the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but shall not include the Mortgagee under a Mortgage prior to acquisition of its fee simple interest in such Lot pursuant to foreclosure of the lien of such Mortgage.

"Special Common Area" shall mean and refer to any interest in real property or improvements which is designated by Declarant in a notice filed in the Real Property Records of Travis County, Texas as common area which benefits one or more, but less than all of the Lots or Owners, and is or will be conveyed to the Association or otherwise held by Declarant for the benefit of the Owners of property to which such Special Common Area benefits. The notice shall identify the Lots or Owners benefitted by such Special Common Area.

1.02. General Definitions. Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Master Declaration.

ARTICLE II

GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01. General Restrictions.

- (a) The Lots shall be used solely for private single family residential purposes.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The location, design, and materials used in construction of all mailboxes including, without limitation, an address identification marker and a light, shall strictly comply with the requirements of the Architectural Guidelines to insure a uniform appearance throughout the Property.
- (f) The design, construction materials, height, and location of all fences shall be approved by the Master Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines.

2.02. Sight Distance at Intersection. No fence, wall, hedge, or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any

Lot within the triangular area formed by the street line, a driveway or alley line and a line connecting them at points ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections shall be maintained to meet the sight line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

2.03. Antennae and Solar Systems. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc (collectively "Antennae"), nor any solar energy system ("Solar System"), shall be erected, maintained or placed on a Lot without the prior written approval of the Master Architectural Control Committee; provide, however, that one (1) satellite dish or other similar instrument with a diameter no greater than one (1) meter in diameter may be affixed to each single family residence located upon the Property. Prior to the erection of any Antennae (unless otherwise permitted by this Section 2.03) or Solar System, plans and specifications and a proposal for screening shall be presented to and expressly approved by the Master Architectural Control Committee, which approval may be denied for any reason whatsoever. Any Antennae or Solar System, if approved, shall be entirely screened from view from adjacent lots and streets. The Master Architectural Control Committee shall have the authority to adopt rules and regulations otherwise in compliance with rules adopted by the Federal Communications Commission for the erection, use, screening, or placement of antennae and satellite dishes which are one (1) meter or less in diameter.

2.04. Insurance Rates. Nothing shall be done or kept on the Property that would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, the Special Common Area, the Association Property, or the improvements located thereon, without the prior written approval of the Board.

2.05. Subdividing and Easements. No Lot shall be further divided or subdivided, nor may any easements or other interests therein covering less than the whole Lot be conveyed by the Owner thereof without the prior express written approval of the Declarant. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No shrubbery, fence or other obstruction shall be placed in any easement. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or any other landscaping or Improvements or to other property of the Owner situated within any such easement.

2.06. Signs. No sign of any kind, including, without limitation, signs advertising property for sale or lease, shall be displayed to the public view without the express prior written approval of the Declarant except for signs that are part of Developer's marketing plan for the Property or any part thereof. The Declarant may permit or prohibit signs of any type advertising a portion of the Property for sale or lease, as it elects, in its sole discretion. Developer intends to implement a marketing program for the Property, which shall include signs advertising property for sale; provided, however, that Declarant may set reasonable standards for such signs including, without limitation, maximum dimensions, style, color, type size, and location.

2.07. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or otherwise appropriately screened from view from any portion of the Property, other than the Lot on which such containers are properly located.

2.08. Noise. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.09. Construction of Improvements. No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any of the Property without the prior written approval of the Master Architectural Control Committee.

2.10. Repair of Buildings. All Improvements upon any of the Property that are not maintained by the Association shall at all times be kept in good condition and repair and adequately maintained by the Owner thereof. The opinion of the Master Architectural Control Committee as to condition and repair shall be final.

2.11. Alteration or Removal of Improvements. Any alteration, remodeling, or construction that in any way alters or modifies the exterior appearance of any Improvements, or the removal of any Improvements within the Property, shall be performed only with the prior written approval of the Master Architectural Control Committee.

2.12. Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved in writing by the Master Architectural Control Committee.

2.13. Hazardous Activities. No activities may be conducted on the Property and no Improvements constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units which are attended while in use for used and cooking purposes only.

2.14. Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the written approval of the Master Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foreman during actual construction may be maintained with the prior approval of Master Architectural Control Committee, such approval to include the nature, size, duration, and location of such structure.

2.15. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.16. Unightly Articles; Vehicles. No article deemed to be unsightly by the Master Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks larger than a 3/4 ton pickup, boats, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, machinery, garden maintenance equipment and inoperable vehicles shall be kept at all times, except when in actual use, in enclosed structures or screened from view, and no repair or maintenance work shall

be done on any of the foregoing or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics (including, without limitation, clothes lines) shall be screened from view from any portion of the Property other than the Lot on which such areas, piles and facilities are properly located. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scraps, refuse, or trash of any kind shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from any portion of the Property other than the Lot on which such materials are properly located.

2.17. Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets not to exceed four (4) in number such as dogs and cats is allowed, and the pups, kittens, or offspring of any such permitted household pets may be kept for a period not in excess of eight weeks; provided, however, that no breeding, raising, or boarding of such pets for commercial purposes is permitted on such sites. No poultry, livestock or exotic animal may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose.

2.18. Travel Trailers and Recreational Vehicles. No travel trailers or recreational vehicles shall be parked in any street or on or near any Lot for more than forty-eight (48) hours or for more than seventy-two (72) hours in any 30-day period, so as to be visible from any other portion of the Property.

2.19. Owner's Responsibility for Maintenance. Each Owner shall maintain and keep in a good state of repair the interior and exterior of all buildings, structures, and other Improvements of any kind or nature that are located upon such Owner's Lot. An Owner, when exercising the right and responsibility of repair, maintenance, replacement, or remodeling, as herein defined, shall never alter in any manner whatsoever the color and exterior appearance of the Improvements located on such Owner's Lot, except by written consent of the Master Architectural Control Committee. Each Owner shall, however, have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows, and doors within such Owner's structure. In the event an Owner fails to maintain the Improvements located on such Owner's Lot as provided herein in a manner that the Master Architectural Control Committee deems necessary to preserve the appearance and value of the Property, the Master Architectural Control Committee may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event such Owner fails to complete such work or maintenance within said period, the Master Architectural Control Committee shall so notify the Board, and the Board may (but shall not be obligated to) cause such work to be done and the Owner shall be personally liable to the Association for the cost of such work. If the Owner fails to pay such cost upon demand by the Board, such cost (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment (as such term is defined in this Declaration) chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.19 (including any cost, fees, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.20. Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area or Special Common Area. The Owner of each Lot shall be liable to the Association for all damages to: (i) the Common Area; (ii) the Special Common Area; (iii) any Improvements constructed thereon; or (iv) to any Improvements constructed upon any Lot, the maintenance of which has been assumed by the Association; which damage is caused by the neglect, misuse or negligence of such Owner or any tenant or other occupant of such Owner's Lot or such Owner's guest or invitee. The full cost of all repairs of such damage shall be an Assessment against the Owner's Lot, secured by the liens reserved in this Declaration for Assessments and collectible by any means provided in this Declaration for the collection of Assessments, including but not limited to foreclosure of such liens against the Owner's Lot(s).

2.21. Compliance with Association Restrictions. Each Owner shall comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions shall constitute a violation of this Declaration and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Manager or Board on behalf of the Association or by the Master Architectural Control Committee or by an aggrieved Owner. Without limiting any rights or powers of the Association or the Board set out in this Declaration, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of this Declaration, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Master Declaration or the Declaration for Assessments and may be collected by any means provided in the Master Declaration or the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.21 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.22. Butane and Fuel Tanks. No butane or fuel tank or other structure or facility for the storage of combustible fuel (other than gas grills) shall be placed or maintained on the Property unless approved in writing by the Master Architectural Control Committee.

2.23. No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Association Restrictions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.24. Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies the criteria set out in Section 13-8-70 of the Land Development Code of the City of Austin and all other applicable governmental requirements. Nothing in this Section 2.24 is intended or shall be construed to limit

or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements.

2.25. No Tennis Courts. No tennis courts shall be constructed on any Lot.

ARTICLE III

THE ASSOCIATION

3.01. **Organization.** The Association shall be a non-profit corporation created for the purposes, changed with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership. Membership in the Association may not be severed from the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.
- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area and applicable Special Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
 - (i) the right of the Association to suspend the Member's voting right and right to use the Common Area for any period during which any Assessment against such Member's Lot(s) remains past due, and for any period during which a Member is in violation of the Association Restrictions;
 - (ii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
 - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Area and, in aid thereof, to mortgage said Common Area;
 - (iv) the right of the Association to make reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other persons entitled to such use; and
 - (v) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interest of the Association

- (c) Each Owner of a Lot which has been designated as a beneficiary of Special Common Area in a notice filed in the Real Property Records of Travis County, Texas, shall have a right and easement of enjoyment in and to all of such Special Common Area, and an access easement by and through such Special Common Area, which easement shall be appurtenant to and shall pass with title to such Owners Lot, subject to the following restrictions and reservations:
- (i) The right of the Association to suspend the Members voting rights and right to use the Special Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Declaration;
 - (ii) The right of the Association to dedicate or transfer all or any part of the Special Common Area to any public agency, authority or utility for any person;
 - (iii) The right of the Association to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;
 - (iv) The right of the Association to make reasonable rules and regulations regarding use of the Special Common Area and any improvements thereon; and
 - (v) The right of the Association to contract for services with third parties on such terms as the Association may determine.

3.03. Voting Rights. The right to cast votes and the number of votes which may be cast for election of members of the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- (a) The Owner of each Lot shall have one (1) vote for each lot so owned. In no event shall any Lot be entitled to more than one (1) vote; provided, however, that in the event of the resubdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such resubdivision. No resubdivision shall be effective, for purposes of the Association Restrictions, unless the same is approved by the appropriate governmental entity in accordance with the requirements of Chapter 212 of the Texas Local Government Code then in effect (or its successor statute), and duly recorded in the Real Property Records of Travis County, Texas. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights shall continue to be determined according to the number of original Lots contained in such consolidated Lot. Nothing herein shall be construed as authorization for any resubdivision or consolidation of Lots; such actions are subject to and require the prior approval of the Master Architectural Committee pursuant to other provisions of this Declaration.

- (b) In addition to the votes to which Developer is entitled by reason of Section 3.03(a), for every one (1) vote outstanding in favor of any other person or entity, Developer shall have four (4) additional votes until such time as Developer no longer owns any of the Lots.
- (c) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remains past due, for any period during which such Owner or such Owner's Lot(s) is in violation of the Association Restrictions or the Declaration.

3.04. Duties of the Association. Subject to and in accordance with these restrictions, the Association acting through the Board shall have and perform each of the following duties:

- (a) Association Property.
 - (1) Ownership and Control. To accept, own, operate, and maintain all Common Area and Special Common Area, together with all improvements of whatever kind and for whatever purpose that may be located in said Common Area and Special Common Area, and all sidewalks, pathways and private driveways and streets located within the Property.
 - (2) Repair and Maintenance. To maintain in good repair and condition the Common Area and Special Common Area and all lands, Improvements, security devices, and other property owned, leased, or licensed to the Association, including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Property.
 - (3) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area and Special Common Area to the extent that such taxes and assessment are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (b) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.
- (c) Rules and Bylaws. To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such Association Rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Common Area and Special Common Area. In the event of any conflict between the terms and provisions of the Articles, Bylaws, or any other Association Rules with this Declaration, the terms and provisions of this Declaration are intended to, and shall be controlling.
- (d) Records. To keep books and records of the Association's affairs and to make such books and records, together with current copies of the Association Restrictions

13281 0045

available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

- (c) Other. To carry out and enforce all duties of the Association set forth in the Association Restrictions.

3.05. Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation. It shall further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) Assessments. To levy assessments as provided herein.
- (b) Right of Entry and Enforcement. To enter at any time in an emergency without notice, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner or any other person or entity, upon any Lot or into any Improvement thereon, or to enter at any time without notice onto any Common Area and Special Common Area, for the purpose of enforcing the Association Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Association Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be deemed a special Assessment against such Lot, shall be a lien upon the Lot entered upon and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VI hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Association Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Association Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area and Special Common Area or Association Property in enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affected Lot(s) has been obtained. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.05(B) (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH).

EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(c) Conveyances. To grant and convey to any person or entity any real property and/or other interest including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any Association Property for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- (1) Parks, parkways or other recreational facilities or structures;
- (2) Roads, streets, walks, street lights, driveways, parking lots, trails, paths and fences;
- (3) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
- (5) Any similar improvements or facilities.

Nothing set forth above, however, shall be construed to permit the use or occupancy of any improvement or other facility in any way that would violate applicable use and occupancy restrictions imposed thereon by the Association Restrictions, or by any governmental authority.

(d) Manager. To retain and pay for the services of a Manager to manage and operate the Association, including the Association Property, to the extent deemed advisable by the Board; provided, however, that the Board will have no power to discharge, limit the authority of or interfere with the exercise of functions by a Manager for the Property appointed pursuant to the Master Declaration. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.

(e) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(f) Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Common Area and Special Common Area, including, but not limited to, any recreational facilities; to maintain and repair any recreational facilities, easements, roads,

13281 0047

roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, fences, ponds, lakes located within or upon the Property and to maintain and repair other portions of the Property.

- (g) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or Assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Association Restrictions.
- (h) Construction on Association Property. To construct new Improvements on or additions to Association Property, subject to the approval of the Master Architectural Control Committee.
- (i) Contracts; Property Ownership. To enter into contracts with Declarant or Developer, and with such other persons or entities on such terms and provisions as the Board shall determine, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.
- (j) Security Services. To provide for and construct and maintain facilities for the provision of security regarding the Property.
- (k) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (l) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area, Special Common Area and any Improvements thereon.

3.06. Indemnification. To the fullest extent permitted by applicable law, but without duplication of (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of *Nolo Contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Association, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Association would have the power to indemnify such person against such liability hereunder or otherwise.

ARTICLE IV

INSURANCE AND RESTORATION

4.01. Insurance. Each Owner shall be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies shall be for the full insurable value of the Improvements constructed upon each Lot, shall contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association shall not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.02. Restoration. In the event of any fire or other casualty, the Owner shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this sentence shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this Declaration and the Master Declaration for Assessments and may be collected by any means provided in the Declaration or the Master Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 4.02, except for such cost, loss, damage, expense, liability, claim or cost of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

4.03. Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the Association's rights under this Article IV, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such

repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board and before the commencement of any reconstruction, repair, restoration or replacement, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE V

ARCHITECTURAL GUIDELINES

5.01. Compliance with Architectural Guidelines. The Master Architectural Control Committee shall have the authority to adopt Architectural Guidelines, which shall comprise procedural and substantive rules and construction materials and design guidelines which shall supplement this Declaration, as the Master Architectural Control Committee may deem necessary or appropriate for the performance of its duties hereunder, including without limitation, design criteria, construction material requirements and specifications, rules and guidelines establishing and describing its review procedures, the principles and criteria used in its review, and any requirements relating to the issuance of certificates of compliance or completion. The Master Architectural Control Committee may amend, modify, supplement or restate the Architectural Guidelines from time to time as it deems advisable. In addition, the Master Architectural Control Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Master Architectural Control Committee and used to defray the administrative expenses incurred by the Master Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Master Architectural Control Committee shall be distributed to the Association at the end of each calendar year. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Property shall strictly comply with the requirements of the Architectural Guidelines, unless a variance is obtained pursuant to Section 5.02.

5.02. Variances. The Master Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration or the Architectural Guidelines or when, in the opinion of the Master Architectural Control Committee, in its sole and absolute discretion. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Master Architectural Control Committee. Plans and specifications which have been approved by the Master Architectural Control Committee without conditions or exception and which reflect variations from this Declaration shall constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Architectural Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this or Architectural Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

ARTICLE VI

COVENANT FOR ASSESSMENTS

6.01. Assessments. Each Owner of any Lot, by acceptance of a deed therefor or ownership interest thereto, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant to pay to the Association: (i) Assessments or charges (as specified in Section 6.03, 6.03A

6.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety, and welfare of the Owners, and the maintenance and improvement of the Property or any part thereof, including, without limitation, Common Area and Special Common Area, and for carrying out the purposes of the Association as stated herein or as otherwise provided in the Articles or Bylaws.

6.03A. Assessment for Security. Each Owner of a Lot shall be assessed a Security Assessment for maintenance and operation of the security gates and related security facilities located on the Property. The amount of the Security Assessment shall be determined by the Board and assessed, billed, collected, secured and otherwise administered by the Association and payable by each Owner in the same manner as other assessments under this Article VI.

6.04. Special Assessments. In addition to the Assessments authorized by Section 6.03 hereof, the Association may, by vote of its Members as set out in Section 6.04A hereof, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction; repair or replacement of any Improvement located upon any of the Common Area and Special Common Area, or any

portion of the Property owned by the Association, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefitting the Association.

6.04A. Vote Required for Special Assessment. Special Assessments levied against the Owner(s) of a particular Lot to cure violations of the Association Restrictions by such Owner(s) shall be deemed approved and authorized automatically upon the occurrence of the events giving rise to such curative Special Assessments. Special Assessments to be levied against all Owners as authorized by Section 6.04 hereof must be approved by a majority of the total votes of the membership of the Association determined in accordance with Section 3.03 of the Declaration, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members in accordance with the Bylaws.

6.05. Due Date of Assessments. The first Assessment shall become due and payable on each Lot in accordance with the periodic payment schedule established by the Board in accordance with Section 6.03. The due date of any Special Assessment hereunder shall be fixed in the resolution authorizing such Assessment or, if not so fixed or established by other terms of this Declaration, the first day of the first month following the imposition of such Special Assessment. Payments shall be considered delinquent if not paid within five (5) days after their due date.

6.06. Late Charges. If any Assessment is not paid before it is delinquent, the Owner responsible for the payment thereof may be required by the Board to pay a late charge at such rate the Board may designate from time to time, and such late charge (and any reasonable handling costs therefor) shall be a charge upon the Lots owned by the said Owner to which the Assessment relates, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s); provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

6.07. Owner's Personal Obligation for Payment of Assessments. The Assessments and late charges provided for herein shall be the personal and individual debt of each Owner. No diminution or abatement of Assessments shall be allowed for inconveniences arising from the making of repairs or improvements to the Common Area and Special Common Area or any Lot, and no Owner may exempt himself from liability for such Assessments and charges through non-use of such Owner's Lot or otherwise.

6.08. Assessment Lien and Foreclosure. All sums assessed or charged in the manner provided in this Article but unpaid, together with all costs and expenses of collection, including reasonable attorney's fees, are secured by a continuing Assessment lien and shall constitute a charge on or against the Lot covered by such Assessment or charge, which shall bind such property in the hands of the Owner, and such Owner's heirs, devisees, and personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment thereof in each such instance, each such lien to be superior and paramount to any homestead or other exemption provided by law. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, and all sums unpaid secured by a first-lien Mortgage securing sums borrowed for the purchase or improvements of the Lot in question, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas before the delinquent Assessment was due. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment 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 one of the officers of the Association and shall be recorded in the Real Property Records of Travis County, Texas. Each Owner, by accepting a deed to a Lot subject to this Declaration, shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce at any time after such payment becomes delinquent by the non-judicial foreclosure of such lien on the defaulting Owner's Lot by the Association in like manner as a deed of trust or real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Robert D. Burton of Travis County, Texas is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Association may have by law and under the Association Restrictions, including the rights of the Association to institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for 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 trustee's and attorney's fees incurred. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property 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 holding a prior lien on any Lot, the Association shall report to said Mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any first-lien Mortgage, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first-lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Lot Owner from paying assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this paragraph, the Association shall upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release shall be signed by an officer of the Association.

6.09. **Exemptions.** Notwithstanding any provision herein to the contrary, the Declarant and all Common Area and Special Common Area shall be exempt from the payment of any Assessment levied by the Association, pursuant to this Article VI.

ARTICLE VII

MORTGAGE PROTECTION

7.01. **Notice to Association.** An Owner who mortgages such Owner's Lot and any residence or structure thereon shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board may, at its election, maintain such information in a book entitled "Mortgagees of Owners."

7.02. **Examination of Books.** The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours upon one business day's notice (not less than 24 hours).

7.03. **Taxes, Assessments and Charges.** All taxes, assessments and charges which may become liens prior to first lien mortgages under local law shall relate only to the individual Lots and not to the Property as a whole.

13281 0053

ARTICLE VIII

GENERAL PROVISIONS

8.01. Duration. This Declaration and the covenants, conditions, restrictions, easements, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Real Property Records of Travis County, Texas, and continuing through and including January 1, 2026, after which time this Declaration shall be automatically extended for successive periods of five (5) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by members of the Association, entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Real Property Records of Travis County, Texas.

8.02. Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments shall be allocated on the per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the Lot. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been designated as a beneficiary of such Special Common Area, such payment shall be allocated on a per Lot basis and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the Lot.

8.03. Amendment. This Declaration may be amended or terminated by the recording in the Real Property Records of Travis County, Texas, of an instrument setting forth the amendment, which said instrument shall be executed and acknowledged by: (i) the Declarant, acting alone; or (ii) the Declarant and the President and Secretary of the Association certifying that such amendment has been approved by Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association.

8.04. Roadway, Utility and General Fence Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, constructed, erected, and maintained in and on any streets maintained by the Association or areas conveyed to the Association or reserved as Common Area and Special Common Area, roadways, sewer lines, water lines, cable television and other communication lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground and fences common to the entire Property, with the right of access to the same at any time for the purposes of repair and maintenance.

8.05. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or

to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

8.06. Interpretation. The provision of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property, provided, however, that the provisions of this Declaration shall not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Property. This Declaration shall be construed and governed under the laws of the State of Texas.

8.07. Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon Lots within the Property, so long as such construction is pursuant to proper approval of the Master Architectural Control Committee.

8.08. Gender. Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

8.09. Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

8.10. Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant, and/or the Association shall have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement shall include both damages for and injunctive relief against the breach of any provision hereof.
- (b) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant, or the Association.
- (c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.
- (d) The failure to enforce any provision of the Association Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

8.11. Construction. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

8.12. Damage and Destruction.

- (a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section 8.12(a), means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.
- (b) Any damage to or destruction of the Common Area or Special Common Area shall be repaired unless a majority of the Board shall decide within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available.
- (c) In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.
- (d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a special Assessment, as provided in Article VI, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.
- (e) If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a special Assessment, as provided in Article VI, against all Owners designated as a beneficiary of such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

- (f) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall be allocated on a per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.
- (g) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments shall be allocated on a per Lot basis among the Lots designated as beneficiaries of such Special Common Area and shall be paid jointly to the Owners of such Lots and the holders of first Mortgages or deeds of trust on their Lots.
- (h) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated on a per Lot basis and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

ARTICLE IX

DEVELOPMENT OF THE PROPERTY

9.01. Addition of Land by Declarant. Declarant may, at any time and from time to time, add land to the Property, and upon the filing of a notice of addition of land as hereinafter described, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein (as modified or amended by the covenants, conditions, restrictions and obligations, if any, set forth in Supplemental Declaration affecting such added lands) shall apply to the added land, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of addition of land containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the book and page numbers of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A description of Special Common Area, if any;
- (C) A statement that the provisions of this Declaration shall apply to the added land; and
- (D) A legal description of the added land.

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 which has not been included in a Plat; (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portion of the Property or Development included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal 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

FILED FOR RECORD

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:

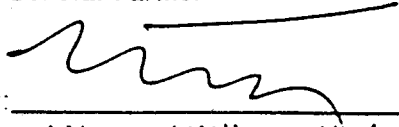
- (A) A reference to this Declaration, which reference shall state the volume and initial page number of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (C) A legal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

EXECUTED to be effective the 30th day of September, 1998.

DECLARANT:

STRATUS PROPERTIES OPERATING CO.,
a Delaware general partnership

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

By: 
Printed Name: William H. Armstrong III
Title: President

THE STATE OF TEXAS

§

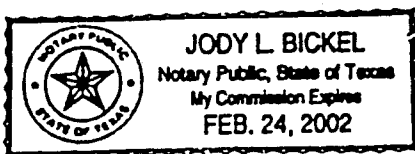
COUNTY OF TRAVIS

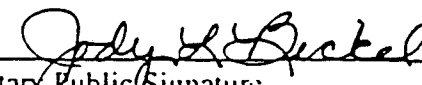
§

§

This instrument was acknowledged before me on September 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 partnership.

(seal)




Notary Public Signature

AFTER RECORDING RETURN TO:

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

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
Record RECORDS of Travis County, Texas, on

OCT 2 1998



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED

98 OCT -2 PM 2:50

DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY TEXAS

FILED FOR RECORD
TRAVIS COUNTY TEXAS

13281 0059

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

19'

9

FILM CODE

00005892384

**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

§

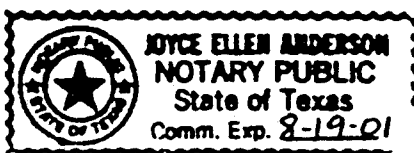
COUNTY OF TRAVIS

§

§

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
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

**Second Amendment to Development Area
Declaration of Covenants,
Conditions, and Restrictions**

**SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

Document No.
1999125315

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1 (the "Amendment") is made by **STRATUS PROPERTIES OPERATING CO.**, a Delaware general partnership ("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 1, in Volume 13281, Page 0035 of the Real Property Records of Travis County, Texas, as amended by that First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930 of the Real Property Records of Travis County, Texas (the "Declaration"), which relates to certain real property (the "Property") therein described.

B. Pursuant to Section 8.03 of the Declaration, the Declaration may be amended by Declarant, acting alone.

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

1. **Landscaping.** Section 2.01 of the Declaration is hereby amended to add the following subsection:

(g) Each Owner shall be required to install landscaping upon such Owner's Lot in accordance with landscaping plans approved in advance of installation by the Master Architectural Control Committee. Notwithstanding any provision in this Declaration to the contrary, such landscaping plans must be approved by the Master Architectural Control Committee prior to occupancy of the single family residential structure located on the Lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the Master Architectural Control Committee shall be installed, and all such landscaping shall be completed, on or before three (3) months after the landscaping plans have been approved by the Master Architectural Control Committee, unless a variance is obtained pursuant to Section 5.02. In addition to any other trees or landscaping required by the Architectural Guidelines of the Master Architectural Control Committee, the landscaping on each Lot shall include the installation of at least two (2) 2" caliper red oak, live oak, or Chinese pistachio trees, unless otherwise approved by the Master Architectural Control Committee (the "Required Trees"); provided, however, for corner Lots, four (4) 2" caliper trees shall be required. The Required Trees shall: (i) be located within twenty (20) feet of the roadway located adjacent to front property line of the Lot (in the case of corner Lots, two (2) trees shall be located within twenty (20) feet of each roadway located adjacent to each property line with street frontage), or in such other location required by the Master Architectural Control Committee; and (ii) comply with the provisions of Section 2.02, unless a variance is obtained in accordance with Section 5.02 or unless otherwise directed by the Master Architectural Control Committee. The requirements of the foregoing sentence may be satisfied by the existence of trees which meet the criteria specified in this section subsequent to construction of a single-family residence on the Lot; provided, however, that the determination of any credit for existing trees shall be determined by the Master Architectural Control Committee, in its sole and absolute discretion. Each Owner shall keep all landscaping and trees, including the Required Trees,

located on such Owner's Lot cultivated, pruned, mowed, and free of trash and debris. The Master Architectural Control Committee or its assigns shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement.


2. **Effect of Amendment.** 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 18th day of October, 1999.

DECLARANT:

STRATUS PROPERTIES OPERATING CO.,
a Delaware general partnership

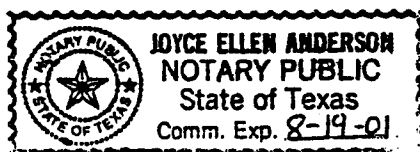
By: **STRATUS PROPERTIES INC.,**
a Delaware corporation

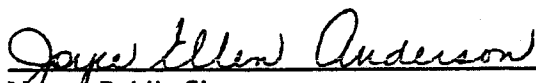
By: 
John Baker, Vice-President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on October 18, 1999, by John Baker, Vice-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)




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 AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

10-19-1999 03:32 PM 1999125315

LEALV \$13.00

Dana DeBeauvoir, COUNTY CLERK
TRAVIS COUNTY, TEXAS



4



AFTER RECORDING RETURN TO:

ROBERT D. BURTON
ARMBRUST & BROWN, L.L.P.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

**THIRD AMENDMENT TO
DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

Cross Reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707, *et. seq.*, in the Official Public Property Records of Travis County, Texas, as amended, that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13174, Page 636, *et. seq.*, in the Official Public Records of Travis County, Texas, and that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas and that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas,

**THIRD AMENDMENT TO DEVELOPMENT AREA DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Third Amendment to the Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1 (the "Amendment") is made by **STRATUS PROPERTIES OPERATING CO., L.P.**, a Delaware limited partnership ("Declarant"), and is as follows:

RECITALS:

A. Declarant (as successor in interest to Stratus Properties Operating Co., a Delaware general partnership) is the Declarant pursuant to that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas and that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas (as amended, the "Declaration"), which encumbers all lots located in Barton Creek ABC West, Phase 1, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 101, Page 164, *et. seq.*, in the Official Public Records of Travis County, Texas (the "Property").

B. Section 8.03 of the Declaration provides that the Declaration may be amended by the Declarant, acting alone, by recording in the Real Property Records of Travis County, Texas an instrument setting forth the amendment executed and acknowledged by the Declarant.

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

1. Amendment of Section 2.15. Section 2.15 of the Declaration is hereby deleted in its entirety and replaced with the following:

2.15. **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. Notwithstanding the foregoing or any provision in this Declaration to the contrary, a water well may be dug and used

on Lot 197, Block A (as shown on the Plat) as may be reasonably necessary for keeping and caring for the horses permitted pursuant to Section 2.17.

2. Amendment of Section 2.17. Section 2.17 of the Declaration is hereby deleted in its entirety and replaced with the following:

2.17. Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets not to exceed four (4) in number, such as dogs and cats, is allowed, and the pups, kittens, or offspring of any such permitted household pets may be kept for a period not to exceed in excess of eight weeks; provided, however, that no breeding, raising or boarding of such pets for commercial purposes is permitted on such sites. No poultry, livestock or exotic animal may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose. Notwithstanding the foregoing or any provision to the contrary in this Declaration, horses may be kept on Lot 197, Block A (as shown on the Plat) for recreation and personal use; provided, that: (i) no more than twelve (12) horses shall be permitted; and (ii) commercial boarding of horses is prohibited. Such fencing and shelters may be constructed upon Lot 197, Block A as are reasonably necessary for keeping and caring for the horses permitted pursuant to this Section 2.17.

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

EXECUTED to be effective as of the 3rd day of October, 2005.

DECLARANT:

STRATUS PROPERTIES OPERATING CO., L.P.,
a Delaware limited partnership

By: STRS L.L.C., a Delaware limited liability company,
General Partner

By: STRATUS PROPERTIES INC., a Delaware
corporation, Sole Member

By: _____
John E. Baker, Senior Vice President

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on October 3rd
2005, by John E. Baker, Senior Vice President of Stratus Properties Inc., a Delaware corporation,
Sole Member of STRS L.L.C., a Delaware limited liability company, general partner of Stratus
Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said entities.



Notary Public Signature

FILED AND RECORDED

OFFICIAL - PUBLIC RECORDS

Dana DeBeauvoir

2005 Oct 04 12:40 PM 2005184130

RANEY \$28.00
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

4



AFTER RECORDING RETURN TO:

ROBERT D. BURTON
ARMBRUST & BROWN, L.L.P.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701



DECLAR 2006021079
4 PGS

**FOURTH AMENDMENT TO
DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

Cross Reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707, *et. seq.*, in the Official Public Property Records of Travis County, Texas, as amended, that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13174, Page 636, *et. seq.*, in the Official Public Records of Travis County, Texas, and that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas, that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas and that certain Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2005184130 in the Official Public Records of Travis County, Texas.

**FOURTH AMENDMENT TO DEVELOPMENT AREA DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Fourth Amendment to the Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1 (the "Amendment") is made by **STRATUS PROPERTIES OPERATING CO., L.P.**, a Delaware limited partnership ("Declarant"), and is as follows:

RECITALS:

A. Declarant (as successor in interest to Stratus Properties Operating Co., a Delaware general partnership) is the Declarant pursuant to that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas, that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas and that certain Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2005184130 in the Official Public Records of Travis County, Texas (as amended, the "Declaration"), which encumbers all lots located in Barton Creek ABC West, Phase 1, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 101, Page 164, *et. seq.*, in the Official Public Records of Travis County, Texas (the "Property").

B. Section 8.03 of the Declaration provides that the Declaration may be amended by the Declarant, acting alone, by recording in the Real Property Records of Travis County, Texas an instrument setting forth the amendment executed and acknowledged by the Declarant.

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

1. Amendment of Section 2.15. Section 2.15 of the Declaration is hereby deleted in its entirety and replaced with the following:

2.15. **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or

removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. Notwithstanding the foregoing or any provision in this Declaration to the contrary, no more than three (3) water wells may be dug and used on Lot 197, Block A (as shown on the Plat) as may be reasonably necessary for keeping and caring for the horses permitted pursuant to Section 2.17.

2. Amendment of Section 2.17. Section 2.17 of the Declaration is hereby deleted in its entirety and replaced with the following:

2.17. Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets not to exceed four (4) in number, such as dogs and cats, is allowed, and the pups, kittens, or offspring of any such permitted household pets may be kept for a period not to exceed in excess of eight weeks; provided, however, that no breeding, raising or boarding of such pets for commercial purposes is permitted on such sites. No poultry, livestock or exotic animal may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose. Notwithstanding the foregoing or any provision to the contrary in this Declaration, horses may be kept on Lot 197, Block A (as shown on the Plat) for recreation and personal use; provided, that: (i) no more than sixteen (16) horses shall be permitted; and (ii) commercial boarding of horses is prohibited. Such fencing and shelters may be constructed upon Lot 197, Block A as are reasonably necessary for keeping and caring for the horses permitted pursuant to this Section 2.17.

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

EXECUTED to be effective as of the 30 day of February, 2006.

DECLARANT:

STRATUS PROPERTIES OPERATING CO., L.P.,
a Delaware limited partnership

By: STRS L.L.C., a Delaware limited liability company,
General Partner

By: STRATUS PROPERTIES INC., a Delaware
corporation, Sole Member

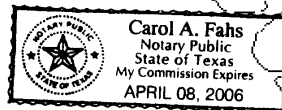
By: _____
John E. Baker, Senior Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on FEBRUARY 3, 2006
2006, by John E. Baker, Senior Vice President of Stratus Properties Inc., a Delaware corporation,
Sole Member of STRS L.L.C., a Delaware limited liability company, general partner of Stratus
Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said entities.

Notary Public Signature

(seal)



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Feb 06 03:34 PM 2006021079

RANEYJ \$28.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

**AFTER RECORDING RETURN TO:**

KENNETH N. JONES
ARMBRUST & BROWN, P.L.L.C.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

**FIFTH AMENDMENT TO
DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

Cross Reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707, *et. seq.*, in the Official Public Property Records of Travis County, Texas, as amended, that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13174, Page 636, *et. seq.*, in the Official Public Records of Travis County, Texas, and that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas, that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas, that certain Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2005184130 in the Official Public Records of Travis County, Texas and that certain Fourth Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2006021079 in the Official Public Records of Travis County, Texas.

{W0734995.4}

**FIFTH AMENDMENT TO DEVELOPMENT AREA DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK ABC WEST, PHASE 1**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Fifth Amendment to the Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1 (the "Amendment") is made by **STRATUS PROPERTIES OPERATING CO., L.P.**, a Delaware limited partnership ("Declarant"), and is as follows:

RECITALS:

A. Declarant (as successor in interest to Stratus Properties Operating Co., a Delaware general partnership) is the Declarant pursuant to that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13281, Page 0035, *et. seq.*, in the Official Public Records of Travis County, Texas as amended by that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded in Volume 13390, Page 2930, *et. seq.*, in the Official Public Records of Travis County, Texas, that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 1999125315 in the Official Public Records of Travis County, Texas, that certain Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2005184130 in the Official Public Records of Travis County, Texas and that certain Fourth Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1, recorded as Document No. 2006021079 in the Official Public Records of Travis County, Texas (as amended, the "Declaration"), which encumbers all lots located in Barton Creek ABC West, Phase 1, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 101, Page 164, *et. seq.*, in the Official Public Records of Travis County, Texas (the "Property").

B. Section 8.03 of the Declaration provides that the Declaration may be amended by the Declarant, acting alone, by recording in the Real Property Records of Travis County, Texas an instrument setting forth the amendment executed and acknowledged by the Declarant.

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

1. Amendment of Section 2.13. A supplemental provision has been added to Section 2.13 of the Declaration such that the entire Section 2.13 shall now read as follows:

“2.13. Hazardous Activities. No activities may be conducted on the Property and no Improvements constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units which are attended while in use for use for cooking purposes only. Notwithstanding the foregoing, and only on and with respect to Lot 197, Block A of the Property (“Lot 197”), and no other portion of the Property, shotguns (with a bore of 20 gauge or smaller) may be occasionally discharged in connection with training dogs but only during time periods when quail or dove hunting are permitted in Travis County and only in full compliance with any and all applicable governmental rules, regulations and ordinances. The activities permitted in the prior sentence shall be immediately and automatically prohibited if title to Lot 197 is ever divided, whether by subdivision, partition, condominium or otherwise.”

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

EXECUTED to be effective as of the 5 day of July, 2017.

DECLARANT:

STRATUS PROPERTIES OPERATING CO., L.P.,
a Delaware limited partnership

By: STRS L.L.C., a Delaware limited liability company,
General Partner

By: STRATUS PROPERTIES INC., a Delaware
corporation, Sole Member

By: Erin D. Pickens
Erin D. Pickens, Senior Vice President

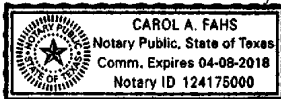
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 5 2017, by Erin D. Pickens, Senior Vice President of Stratus Properties Inc., a Delaware Corporation, Sole Member of STRS L.L.C., a Delaware limited liability company, general partner of Stratus Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said entities.

Carol A. Fahs
Notary Public Signature

(seal)



{W0734995.4}

4



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana Debeauvoir
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

July 13 2017 11:01 AM

FEE: \$ 38.00 2017111818

RESTRICTIVE COVENANT

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.

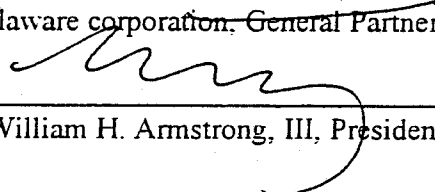
3. Severability and Construction. The provisions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires 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 30th 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

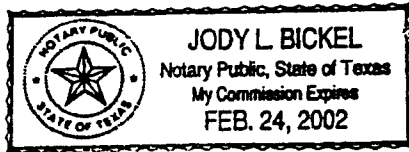
13281 0061

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 PM 2:51

DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

13281 0063

RECEIPT#: 000013060 TRANS#: 07560 DEPT: REGULAR RECORD \$15.00
CASHIER: DGFRI FILE DATE: 10/2/98 TRANS DATE: 10/2/98
PAID BY: CHECK# 16106

**NOTICE OF APPLICABILITY OF MASTER
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
BARTON CREEK ABC WEST, PHASE 1**

NOTICE OF APPLICABILITY OF
MASTER DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
BARTON CREEK ABC WEST, PHASE 1

FILED
98 MAY -1 PM 4:13
DAN DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

This Notice of Applicability of Master Declaration of Covenants, Conditions, and Restrictions For Barton Creek ABC West, Phase 1 is made and executed by FM PROPERTIES OPERATING CO., a Delaware general partnership ("Declarant") and is as follows:

RECITALS:

1. **Applicability of Master Declaration to Property.** This Notice of Applicability is filed with respect to Barton Creek ABC West, Phase 1, a subdivision located in Travis County, Texas according to the map or plat recorded or to be recorded in the Real Property Records of Travis County, Texas (the "Property"). Pursuant to that 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, as amended by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11706, Page 726, Real Property Records of Travis County, Texas, that one certain Second Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 12110, Page 1340, Real Property Records of Travis County, Texas, and that certain Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 12881, Page 1132, Real Property Records of Travis County, Texas (as amended, the "Master Declaration"), Declarant served notice that portions of the property described on Exhibit "A" to the Master Declaration, upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Declaration.

2. **Property Incorporated Into Development.** The provisions of the Master Declaration shall apply to the Property. The Property is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Declaration.

3. **Homeowners Association.** A non-profit corporation, in the form of a homeowner's association established for the Property, shall be responsible for maintenance of all private roadways located within the Property.

4. **Miscellaneous.** This notice constitutes a notice of applicability under Section 10.05 of the Master Declaration. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Master Declaration.

EXECUTED to be effective as of the 15 day of MAY, 1998.

FM PROPERTIES OPERATING CO.,
a Delaware general partnership

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

By: [Signature]
William H. Armstrong, III, President and Chief
Operating Officer

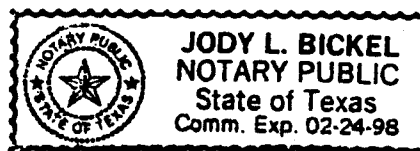
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This document was acknowledged before me on May 1st, 1998, by
William H. Armstrong, III, President and Chief Operating Officer of FM Properties Inc., a Delaware
corporation, General Partner of FM Properties Operating Co., a Delaware general partnership, on behalf of
said partnership.

[Signature]
Notary Public Signature

(seal)

AFTER RECORDING, RETURN TO:
Robert D. Burton
Armbrust Brown & Davis, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701



AMENDED AND RESTATED RESTRICTIVE COVENANT
[Wimberly Lane Maintenance- ABC West, Phase 2]

This Amended and Restated Restrictive Covenant (the "Declaration") is made by **STRATUS PROPERTIES OPERATING CO.,L.P.** a Delaware limited partnership ("Stratus") and is as follows

On January 21, 2001, Stratus recorded that certain Restrictive Covenant, as Document No 2001035795, Official Public Records of Travis County, Texas (the "Original Declaration") The Original Declaration impressed certain covenants on approximately 120 245 acres of real property located in Travis County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Property")

Stratus, as the owner of all of the Property, desires to terminate the Original Declaration in its entirety, and substitute the terms and provisions of this Declaration in its place Upon recordation of this Declaration in the Official Public Records of Travis County, Texas, the terms and provisions of this Declaration shall supercede the terms and provisions of the Original Declaration

RECITALS

A Stratus is the owner of approximately 120 245 acres of real property located in Travis County Texas, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property")

B The Property is located adjacent to Barton Creek ABC West, Phase I, a subdivision (the "Subdivision") located in Travis County, Texas, of record in Volume 101 Page 164, Official Public Records of Travis County, Texas The term "Roadway" as used herein shall mean and refer only to the portion of Lot 186 known as Wimberly Lane Stratus has conveyed Lot 186 to The Barton Creek ABC West Community, Inc., a Texas non-profit corporation (the "Association"), by Deed Without Warranty, recorded as Document No. 2001035796, in the Official Public Records of Travis County, Texas (the "Deed")

C The Roadway provides ingress and egress from the Property to Barton Creek Boulevard, an existing public thoroughfare Lot 186 has been impressed with an easement in favor of the Property, said easement being more particularly described in the Deed

D The Association is obligated, inter alia, to maintain all roadway improvements presently constructed on the Roadway and to maintain landscaping pursuant to the terms and provisions of the Deed (collectively, the "Maintenance Obligations") Stratus has agreed to impress the Property with a covenant obligating the owner of the Property to contribute a pro-rata share of estimated annual third-party costs to be incurred and paid by the Association to discharge the Maintenance Obligations of the Roadway (the "Maintenance Expenses")

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

Allocation of Maintenance Expenses. The Association shall allocate and levy, on an annual basis, a portion of the annual Maintenance Expenses against the Property (the "Annual Levy"). On the Effective Date of this instrument, the Annual Levy against the Property shall in no event exceed the portion of Maintenance Expenses levied against a single Lot (as such term is defined in that certain Development Area Declaration of Covenants, Conditions and Restrictions For Barton Creek ABC West, Phase I, recorded in Volume 13281, Page 0035, Official Public Records of Travis County, Texas) in the Subdivision. In the event no portion of the Maintenance Expenses are levied by the Association against lots located within the Subdivision for any one year, no Annual Levy shall be chargeable against the Property for such year. A statement reflecting the amount of the Annual Levy (the "Annual Levy Statement"), which shall include a calculation of Maintenance Expenses attributable to the Roadway and the Property, and evidence demonstrating that the Maintenance Expenses have been levied against lots located within the Subdivision (which may be a copy of a unanimous consent of the Association directors, or a copy of the minutes of any director meeting, adopting and levying such obligations) shall be mailed to the owner(s) of the Property. Any Annual Levy which remains unpaid sixty (60) days after the Annual Levy Statement has been mailed to the owner of the Property at 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. In the event the Property is subdivided into lots, on the date the final plat of the subdivision is filed in the Official Public Records of Travis County, Texas, an Annual Levy shall be impressed against each lot. The Annual Levy impressed against each lot shall in no event exceed the portion of Maintenance Expenses levied against a single Lot in the Subdivision. In the event the Property, or any subdivided lot within the Property, is developed for commercial use, on the date a building permit is issued for the construction of commercial improvements on the Property, the Annual Levy against such lot shall be equal to the portion of Maintenance Expenses levied against a single Lot in the subdivision multiplied by the total number of living unit equivalents allocated to the commercial lot by the applicable utility service provider. In the event the Annual Levy is allocated among subdivided lots within the Property, an Annual Levy Statement shall be mailed to each lot owner, and the lot owner shall only be obligated to pay the portion of the Annual Levy assessed against their lot. In no event shall any allocated Annual Levy levied against a particular lot be considered an obligation against any other lot within the Property.

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 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 Property, 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 or development of all or any portion of the Property. To evidence the lien, the Association may prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Property covered by such lien 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 shall report to said mortgagee any delinquent Annual Levy.

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 16th day of September, 2002 (the "Effective Date")

STRATUS:

STRATUS PROPERTIES OPERATING CO., L.P.,
a Delaware limited partnership

By STRS L.L.C., a Delaware limited liability company,
General Partner

By STRATUS PROPERTIES INC., a Delaware
corporation, Sole Member

By J. E. Baker
Name John E. Baker
Title Senior Vice-President

APPROVED:

THE BARTON CREEK ABC WEST COMMUNITY, INC.,
a Texas non-profit corporation

By J. E. Baker
John E. Baker, Director

By James B. Brown
James B. Brown, Director

By David Ruehlman
David Ruehlman, Director

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on September 16, 2002, by John Baker, Senior Vice President of Stratus Properties, Inc., a Delaware corporation, sole member of STRS L.L.C., a Delaware limited liability company, general partner of Stratus Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said entities.



(Seal)

Jill S. Orr
Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on September 16 2002, by John Baker, Director of the Barton Creek ABC West Community, Inc , a Texas non-profit corporation, on behalf of said corporation.



(Seal)

Jill S. Orr
Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on September 16 2002, by James B Baker, Director of the Barton Creek ABC West Community, Inc , a Texas non-profit corporation, on behalf of said corporation.



(Seal)

Jill S. Orr
Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on September 16 2002, by David Ruehlman, Director of the Barton Creek ABC West Community, Inc , a Texas non-profit corporation, on behalf of said corporation.



(Seal)

Jill S. Orr
Notary Public Signature

AFTER RECORDING RETURN TO

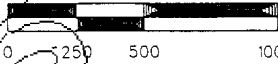
Robert D Burton
Armbrust Brown & Davis, L L P
100 Congress Avenue, Suite 1300
Austin, Texas 78701

EXHIBIT A

MEREDITH L. PATTERSON
VOL 12678, PG 222
TCRPR

PATTERSON PLACE
VOL 97, PG 55-58
TCRPR

BARTON BEND
VOL 83, PG 137-139
TCRPR



STRATUS PROPERTIES
OPERATING CO.
VOL 11706, PG 590
TCRPR

120.245 ACRES

BARTON CREEK
ABC WEST PHASE 1
VOL 101 PG 164-169
TCRPR

BARTON CREEK
WEST
BLOCK 3, LOT 67
VOL 85, PG 774-79A
TCRPR

SOUTHWEST AUSTIN
CATHOLIC SCHOOL
VOL 13042 PG 1687
TCRPR

ST MICHAEL'S
ACADEMY
VOL 84 PGS 87C-188A
TCRPR

ESTATES ABOVE
LOST CREEK
VOL 81 PGS 286-294

LOST CREEK ESTATES
PHASE -B
VOL 82 PGS 234-235

FOR LINE AND CURVE TABLES SEE SHEET 2

SHEET 1 OF 2

RAMSEY LAND SURVEYING LLC

8713 SOUTHWEST PARKWAY
P.O. BOX 92768
AUSTIN, TEXAS 78709-2768
PHONE (512) 301-9398
FAX (512) 301-9395
r1survey@aol.com

BOUNDARY EXHIBIT
PROPOSED BARTON CREEK SECTION
ABC WEST, PHASE 2
TRAVIS COUNTY, TEXAS

CCA CRID NO C-24

JOB NO 305

10-10-01 01:30:01

LINE	DIRECTION	DISTANCE
L1	N59°17'03"W	166.28
L2	N47°31'32"W	145.63
L3	N63°47'05"W	194.28
L4	N61°42'06"W	90.03
L5	N01°14'47"E	199.95
L6	N09°13'22"E	249.94
L7	N37°16'22"E	179.96
L8	N25°22'38"W	299.92
L9	N23°06'36"W	389.91
L10	N23°02'38"W	299.92
L11	N15°08'58"W	199.95
L12	N03°54'38"W	189.94
L13	N07°44'22"E	199.90
L14	N32°24'22"E	189.97
L15	N47°46'17"W	57.30
L16	N30°45'25"E	141.84
L17	N61°24'48"E	98.93
L18	N52°41'08"E	57.33
L19	N40°03'09"E	102.87
L20	N27°41'16"E	181.88
L21	N20°54'13"E	189.98
L22	N43°49'09"E	239.95
L23	N35°26'03"E	167.24
L24	N51°11'47"E	100.72
L25	N41°19'06"E	113.62
L26	N55°26'28"E	87.02
L27	N60°53'51"E	127.51
L28	N25°37'06"W	114.66
L29	N40°41'10"W	49.17
L30	N28°19'18"E	303.56
L31	S66°21'04"E	40.68
L32	S75°44'29"E	92.98
L33	S64°44'37"E	179.18
L34	S63°05'19"E	67.35
L35	S71°17'55"E	152.99
L36	N82°32'05"E	60.19
L37	S77°14'55"E	48.26
L38	S82°37'33"E	29.29
L39	S76°49'51"E	55.61

LINE	DIRECTION	DISTANCE
L40	S44°53'43"E	26.69
L41	S15°03'37"E	6.38
L42	S56°28'00"E	28.61
L43	S60°19'16"E	25.67
L44	S65°45'14"E	104.74
L45	S59°49'06"E	171.38
L46	S63°24'19"E	196.00
L47	S65°11'26"E	43.88
L48	S30°29'52"W	759.96
L49	S19°51'43"W	204.22
L50	S01°13'51"W	161.89
L51	S03°24'42"W	165.26
L52	S07°36'30"E	255.96
L53	S24°36'35"E	135.41
L54	S09°56'44"E	198.00
L55	S85°27'44"W	126.29
L56	S13°44'10"W	120.00
L57	S18°52'46"W	127.20
L58	S30°52'02"E	64.42
L59	S07°51'01"E	7.24
L60	S15°19'45"W	65.37
L61	S39°10'18"W	75.08
L62	S59°24'29"W	44.25
L63	S39°52'59"W	102.64
L64	S18°42'58"W	113.75
L65	S33°04'40"W	113.75
L66	S47°26'21"W	113.75
L67	S61°33'07"W	110.40
L68	S67°33'06"W	80.00
L69	S63°45'11"W	70.09
L70	S52°19'57"W	68.00
L71	S40°51'16"W	68.00
L72	S29°22'33"W	68.00
L73	S17°53'51"W	68.00
L74	S07°53'35"W	74.30
L75	S06°42'25"W	240.00
L76	S27°42'21"E	34.40
L77	S15°24'35"W	230.37
L78	S14°02'30"W	330.90

CURVE	LENGTH	DELTA	RADIUS	DIRECTION	CORD
C1	45.50	35°31'22"	472.00	S77°17'33"W	45.48
C2	119.02	12°51'59"	530.00	N82°41'43"E	118.77

SHEET 2 OF 2

RAMSEY LAND SURVEYING, L L C

8718 SOUTHWEST PARKWAY
P O BOX 92758
AUSTIN, TEXAS 78709-2758
PHONE (512) 301-9398
FAX (512) 301-9395
RISUR/9/9/1999 net

BOUNDARY EXHIBIT
PROPOSED BARTON CREEK SECTION
ABC WEST, PHASE 12
TRAVIS COUNTY, TEXAS

COA CRID NO C-24

JOB NO C-0-15

510-ABC W 21 X DGN C-W 01-50-01

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

09-17-2002 03:24 PM 2002173907
ZAVALLAR \$21.00
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

Recorders Memorandum: At the time of recordation the instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions, and changes were present at the time the instrument was filed and recorded.

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



AMEND

2006058431

6 PGS

4



AFTER RECORDING RETURN TO:

ROBERT D. BURTON
ARMBRUST & BROWN, L.L.P.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

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

Cross Reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707, *et. seq.*, in the Official Public Property Records of Travis County, Texas, as amended, that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase II, recorded as Document No. 2004070708 in the Official Public Records of Travis County, Texas, and that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase II, recorded as Document No. 2004070709 in the Official Public Records of Travis County, Texas.

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

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

RECITALS:

A. Declarant (as successor in interest to Stratus Properties Operating Co., a Delaware general partnership) is the Declarant pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707, *et. seq.*, in the Official Public Records of Travis County, Texas, as amended, that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase II, recorded as Document No. 2004070708 in the Official Public Records of Travis County, Texas, and that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase II, recorded as Document No. 2004070709 in the Official Public Records of Travis County, Texas (as amended, the "Declaration"), which encumbers all lots located in Barton Creek ABC West, Phase II, a subdivision in Travis County, Texas, according to the map or plat thereof recorded as Document No. 200400122 in the Official Public Records of Travis County, Texas (the "Property").

B. Section 10.03 of the Declaration provides that the Declaration may be amended by the Declarant, acting alone, by recording in the Real Property Records of Travis County, Texas an instrument setting forth the amendment executed and acknowledged by the Declarant.

C. Section 3.09 of the Declaration provides that merger or consolidation of the Association with another association must be evidenced by amendment to the Declaration. The amendment must be approved by: (i) the Declarant (so long as Declarant owns any Lots within the Property) only; or (ii) the Declarant (so long as Declarant owns any Lots within the Property) and Members holding at least 70% of the votes in the Wimberly II Community, Inc., a Texas non-profit corporation and the current "Association" as defined in the Declaration (the "Original Association").

D. The Original Association has merged with and into The Barton Creek ABC West Community, Inc., a Texas non-profit corporation. As such, Declarant now desires to amend the Declaration as required pursuant to Section 3.09 of the Declaration.

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

1. Defined Terms. Section 1.01 of the Declaration is hereby amended to replace the current definitions of "Articles" and "Association" with the following:

"**Articles**" means the Articles of Incorporation of The Barton Creek ABC West Community, Inc., a Texas non-profit corporation and the surviving corporation of the merger of Wimberly II Community, Inc., a Texas non-profit corporation and The Barton Creek ABC West Community, Inc., a Texas non-profit corporation, as the same may be amended from time to time.

"**Association**" means The Barton Creek ABC West Community, Inc., a Texas non-profit corporation, and the surviving corporation of the merger of Wimberly II Community, Inc., a Texas non-profit corporation and The Barton Creek ABC West Community, Inc., a Texas non-profit corporation.

2. Voting Rights. Section 3.03(b) of the Declaration is hereby deleted in its entirety and replaced with the following:

(b) In addition to the votes to which Declarant is entitled by reason of *Section 3.03(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until such time as Declarant no longer owns any of the Lots; provided, however, that Declarant shall only be entitled to one (1) vote for each Lot it owns within the Property with respect to the election or removal of members of the Board or the amendment of the Bylaws.

3. Control by Declarant. Section 3.07 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.07. [INTENTIONALLY OMITTED]

4. Amendment of Section 5.01. Section 5.01 of the Declaration is hereby deleted in its entirety and replaced with the following:

5.01. Construction of Improvements; Authority.

(a) No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Wimberly II Architectural Control Committee.

- (b) Notwithstanding the foregoing or any provision in this Declaration to the contrary, the Declarant will have all of the right, title, interest, powers, privileges, benefits and obligations of the Wimberly II Architectural Control Committee as such right, title, interest, powers, privileges, benefits and obligations relate to a Lot until six (6) months after a single family residence has been constructed on such Lot and is ready for occupancy. At such time, the Wimberly II Architectural Control Committee will have all right, title, interest, powers, privileges, benefits and obligations otherwise granted to it pursuant to this Declaration with respect to such Lot.

5. Amendment of Section 5.02. Sections 5.02(a) and 5.02(j) of the Declaration are hereby deleted in their entirety and replaced with the following:

- (a) Composition. The Wimberly II Architectural Control Committee shall be composed of at least three (3) and no more than five (5) persons appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. For so long as Declarant owns all or any portion of the Property, Declarant shall have the right to appoint and remove (with or without cause), at any time, all members of the Wimberly II Architectural Control Committee unless such right is transferred in writing to the Board.
- (j) Relationship of Wimberly II Architectural Control Committee with Master Architectural Control Committee Established Under the Master Declaration. Pursuant to the terms and provisions of the Partial Assignment, Declarant retained the right to establish the Wimberly II Architectural Control Committee and to appoint and remove all members thereof. Except as provided below, the Master Architectural Control Committee established under the Master Declaration has no authority to review, approve, or disapprove any Improvement constructed on the Property until the earlier of such time as Declarant (i) has assigned its rights to appoint and remove all members of the Wimberly II Architectural Control Committee to the Board or (ii) no longer owns all or any portion of the Property, at which time all rights, duties and obligations of the Wimberly II Architectural Control Committee shall be automatically transferred to the Master Architectural

Control Committee established under the Master Declaration.

Notwithstanding the foregoing, in the event that the Master Architectural Control Committee established under the Master Declaration is granted the authority pursuant to this Section 5.02(j) to review, approve, or disapprove any Improvement constructed on the Property, the Declarant shall nonetheless retain all architectural review authority with respect to a Lot until six (6) months after a single family residence has been constructed on such Lot and is ready for occupancy, after which time the authority to review, approve or disapprove any Improvement on said Lot shall be automatically transferred to the Master Architectural Control Committee established under the Master Declaration.

6. Vote Required for Special Assessment. Section 6.04A of the Declaration is hereby deleted in its entirety and replaced with the following:

6.04A. Vote Required for Special Assessment. Special Assessments levied against the Owner(s) of a particular Lot to cure violations of the Association restrictions by such Owner(s) shall be deemed approved and authorized automatically upon the occurrence of the events giving rise to such curative Special Assessments. Special Assessments to be levied against all Owners as authorized by *Section 6.04* hereof must be approved by a majority of total votes of the membership of the Association (following the merger between The Barton Creek ABC West Community, Inc. and Wimberly II Community, Inc.) determined in accordance with *Section 3.03* of each applicable Declaration, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members in accordance with the Bylaws.

7. Effect of Merger or Consolidation. Notwithstanding any provision to the contrary in the Declaration, in the event that the Association merges or consolidates with another entity, all of the rights granted to the Declarant pursuant to the Declaration will expressly survive such merger or consolidation.

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

EXECUTED to be effective as of the 30th day of March, 2006.

DECLARANT:

STRATUS PROPERTIES OPERATING CO., L.P.,
a Delaware limited partnership

By: STRS L.L.C., a Delaware limited liability company,
General Partner

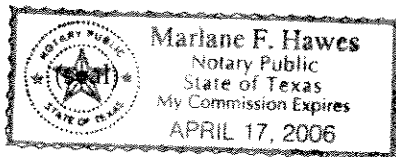
By: STRATUS PROPERTIES INC., a Delaware
corporation, Sole Member


By: 
John E. Baker, Senior Vice President

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

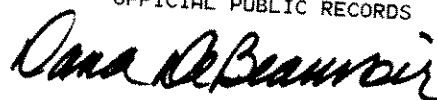
This instrument was acknowledged before me on March 30th
2006, by John E. Baker, Senior Vice President of Stratus Properties Inc., a Delaware corporation,
Sole Member of STRS L.L.C., a Delaware limited liability company, general partner of Stratus
Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said entities.




Notary Public Signature

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2006 Mar 31 03:01 PM 2006058431

RANEYJ \$36.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR BARTON CREEK
ABC WEST PHASE II**



AFTER RECORDING RETURN TO:

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

Watershed Protection and
Development Review Dept.
505 Barton Springs Rd., 4th Fl.
Austin, TX 78704
ATTN: Cesar Zavala

**BARTON CREEK NORTH
[BARTON CREEK ABC WEST PHASE II]
DEVELOPMENT AREA DECLARATION**

DECLARANT: STRATUS PROPERTIES OPERATING CO., L.P.

Cross reference to Cross reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707 of the Official Public Records of Travis County, Texas, as amended, and that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded as Document No. 2002044488 in the Official Records of Travis County, Texas.

123294-4 03/09/2004

**DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
[Barton Creek ABC West Phase II]**

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

This Development Area Declaration of Covenants, Conditions and Restrictions [Barton Creek ABC West Phase II] (the "Declaration") is made by STRATUS PROPERTIES OPERATING CO. L.P., a Delaware limited partnership (the "Declarant"), and is as follows:

RECITALS

A. The Declarant is the owner of all lots located in BARTON CREEK ABC WEST, PHASE II, a subdivision in Travis County, Texas, according to the map or plat (the "Plat") thereof recorded in Document No. 200400122, Official Public Records of Travis County, Texas (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 II, recorded in the Official Public 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, as amended (the "Master Declaration").

C. Pursuant to the terms and provisions of that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions dated February 25, 2002, recorded as Document No. 2002044488 in the Official Records of Travis County (the "Partial Assignment"), Declarant reserved its right as Declarant under the Master Declaration to add the Property to the terms and provisions of the Master Declaration.

D. The Master Declaration permits the Declarant to file Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Declaration, which shall be in addition to the covenants, conditions, and restrictions of the Master Declaration.

E. Declarant desires to create upon the Property a residential community and carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

F. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property, and each owner thereof, which shall be in addition to the covenants, conditions, and restrictions set forth in the Master Declaration.

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 and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter 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 and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration.

ARTICLE I

DEFINITIONS

1.01. Defined Terms. Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

"Wimberly II Architectural Control Committee" means the committee created by Declarant as described in this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Architectural Guidelines" means the architectural guidelines adopted by the Wimberly II Architectural Control Committee, as such architectural guidelines may be amended, modified, or restated from time to time.

"Articles" means the Articles of Incorporation of the Wimberly II Community, Inc., to be filed in the office of the Secretary of State of the State of Texas, as the same may be amended from time to time.

"Assessment" or "Assessments" means assessments as may be levied by the Association under the terms and provisions of this Declaration and shall include regular and special assessments.

"Association" means the Wimberly II Community, Inc., a Texas non-profit corporation.

"Association Restrictions" means this Declaration as the same may be amended from time to time, together with the Articles, Bylaws, and Association Rules, from time to time in effect.

"Association Rules" means the rules and regulations adopted by the Board pursuant to *Section 3.04(c)* hereof as may be amended from time to time.

"Board" means the Board of Directors of the Association.

"Bulk Rate Contract" or "Bulk Rate Contracts" shall mean and refer to one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

"Bylaws" means the bylaws of the Association as adopted by the Board and as amended from time to time.

"Common Area" means those areas within the Property which have been or may in the future be conveyed to, or leased by, the Association or held for the benefit of the Owners as determined by the Board in its sole discretion, including, without limitation, all private streets and easements for

landscape, drainage, irrigation, fence or related purposes. The Common Area may be owned by the Association, but held for the use and enjoyment of the Owners.

"Declarant" means Stratus Properties Operating Co., L.P., a Delaware limited partnership, its successors or assigns; provided that any assignment(s) of the rights of Stratus Properties Operating Co., L.P., as Declarant, must be expressly set forth in writing and the mere conveyance of a portion or all of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

"Declaration" means this instrument as it may be amended from time to time.

"Improvements" means every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, other utilities, or otherwise.

"Lot" or "Lots" means one or more of the subdivided lots within the Property other than Common Areas.

"Master Association" means the Barton Creek North Property Owners Association, Inc., a Texas non-profit corporation.

"Master Declaration" means that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990, of record in Volume 11324, Page 707 of the Real Property Records of Travis County, Texas, filed against the Property and other real estate in Travis County, Texas, as such declaration may be modified, amended, or restated from time to time.

"Mortgage" or "Mortgages" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Property given to secure the payment of a debt.

"Mortgagee" or "Mortgagees" means the holder or holders of any Mortgage(s).

"Owner" or "Owners" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but shall not include the Mortgagee under a Mortgage prior to acquisition of its fee simple interest in such Lot pursuant to foreclosure of the lien of such Mortgage.

1.02. **General Definitions.** Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Master Declaration.

ARTICLE II

GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

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.
- (b) Each Lot must contain a private garage for not fewer than two (2) automobiles.
- (c) All roof materials, including color, must be approved in advance by Wimberly II Architectural Control Committee.
- (d) 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 Wimberly II Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines.
- (e) All fences, including the material, height, or location of such fence must be approved in advance by the Wimberly II Architectural Control Committee.
- (f) 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, Declarant 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.
- (g) 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.
- (h) 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.
- (i) All signage shall comply with sign guidelines adopted by the Association or the Wimberly II Architectural Control Committee. The Association and the Wimberly II Architectural Control Committee reserve the right to amend or modify the sign guidelines from time to time.
- (j) 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 Wimberly II 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.

2.02. Sight Distance at Intersection. No fence, wall, hedge, or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line

connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within the triangular area formed by the street line, a driveway or alley line and a line connecting them at points ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections shall be maintained to meet the sight line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

2.03. Antennas. Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained, or placed on any Lot without the prior written approval of the Wimberly II Architectural Control Committee.

- (a) **Dishes Over One Meter Prohibited.** A satellite dish antenna which is over one meter in diameter is prohibited.
- (b) **Notification.** An Owner who wishes to install a satellite dish one meter or less in diameter (a "Permitted Antenna") must submit a written notice to the Wimberly II Architectural Control Committee, which notice must include the Owner's installation plans for the satellite dish.
- (c) **One Dish Limitation.** Only one satellite dish per residence is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Wimberly II Architectural Control Committee. Upon notification, the Owner will be permitted to install an additional antenna if a single satellite is not sufficient for the reception of an acceptable quality signal and the use of an additional antenna results in the reception of an acceptable quality signal.
- (d) **Permitted Installation Locations.** In order of preference, the location of a Permitted Antenna which will be considered least visible by the Wimberly II Architectural Control Committee is as follows:
 - (i) Attached to the rear portion of the residence, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and streets; then
 - (ii) Attached to the side of the residence, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and streets.

The Wimberly II Architectural Control Committee may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

2.04. Insurance Rates. Nothing shall be done or kept on the Property that would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, the Association Property, or the improvements located thereon, without the prior written approval of the Board.

2.05. Subdividing and Easements. No Lot shall be further divided or subdivided, nor may any easements or other interests therein covering less than the whole Lot be conveyed by the Owner thereof without the prior express written approval of the Declarant. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No shrubbery, fence or other obstruction shall be placed in any easement. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or any other landscaping or Improvements or to other property of the Owner situated within any such easement.

2.06. Signs. No sign of any kind shall be displayed to the public view on any Unit or Common Element without the prior written approval of the Wimberly II Architectural Control Committee, except for:

- (a) signs which are part of Declarant's overall marketing or construction plans or activities for the Regime;
- (b) one (1) small security service sign per residence, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the residence;
- (c) permits as may be required by legal proceedings; and
- (d) permits as may be required by any governmental entity.

An Owner will be permitted to post a "no soliciting" sign near or on the front door to the residence, provided, that the sign not exceed twenty-five (25) square inches.

2.07. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or otherwise appropriately screened from view from any portion of the Property, other than the Lot on which such containers are properly located.

2.08. Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.09. Construction of Improvements. No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any of the Property without the prior written approval of the Wimberly II Architectural Control Committee.

2.10. Repair of Buildings. All Improvements upon any of the Property that are not maintained by the Association shall at all times be kept in good condition and repair and adequately maintained by the Owner thereof. The opinion of the Wimberly II Architectural Control Committee as to condition and repair shall be final.

2.11. Alteration or Removal of Improvements. Any alteration, remodeling, or construction that in any way alters or modifies the exterior appearance of any Improvements, or the removal of any Improvements within the Property, shall be performed only with the prior written approval of the Wimberly II Architectural Control Committee.

2.12. Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved in writing by the Wimberly II Architectural Control Committee.

2.13. Hazardous Activities. No activities may be conducted on the Property and no Improvements constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units which are attended while in use for used and cooking purposes only.

2.14. Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the written approval of the Wimberly II Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foreman during actual construction may be maintained with the prior approval of Wimberly II Architectural Control Committee, such approval to include the nature, size, duration, and location of such structure.

2.15. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.16. Unightly Articles: Vehicles. No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks larger than a 3/4 ton pickup, boats, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, machinery, garden maintenance equipment and inoperable vehicles shall be kept at all times, except when in actual use, in enclosed structures or screened from view, and no repair or maintenance work shall be done on any of the foregoing or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics (including, without limitation, clothes lines) shall be screened from view from any portion of the Property other than the Lot on which such areas, piles and facilities are properly located. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scraps, refuse, or trash of any kind shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from any portion of the Property other than the Lot on which such materials are properly located.

2.17. Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets not to exceed four (4) in number such as dogs and cats is allowed, and the pups, kittens, or offspring of any such permitted household pets may be kept for a period not in excess of eight weeks; provided, however, that no breeding, raising, or boarding of such pets for commercial purposes is permitted on such sites. No poultry, livestock or exotic animal may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose.

2.18. Travel Trailers and Recreational Vehicles. No travel trailers or recreational vehicles shall be parked in any street or on or near any Lot for more than forty-eight (48) hours or for more than seventy-two (72) hours in any 30-day period, so as to be visible from any other portion of the Property.

2.19. Owner's Responsibility for Maintenance. Each Owner shall maintain and keep in a good state of repair the interior and exterior of all buildings, structures, and other Improvements of any kind or nature that are located upon such Owner's Lot. An Owner, when exercising the right and responsibility of repair, maintenance, replacement, or remodeling, as herein defined, shall never alter in any manner whatsoever the color and exterior appearance of the Improvements located on such Owner's Lot, except by written consent of the Wimberly II Architectural Control Committee. Each Owner shall, however, have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows, and doors within such Owner's structure. In the event an Owner fails to maintain the Improvements located on such Owner's Lot as provided herein in a manner that the Wimberly II Architectural Control Committee deems necessary to preserve the appearance and value of the Property, the Wimberly II Architectural Control Committee may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event such Owner fails to complete such work or maintenance within said period, the Wimberly II Architectural Control Committee shall so notify the Board, and the Board may (but shall not be obligated to) cause such work to be done and the Owner shall be personally liable to the Association for the cost of such work. If the Owner fails to pay such cost upon demand by the Board, such cost (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment (as such term is defined in this Declaration) chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.19* (including any cost, fees, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.20. Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area. The Owner of each Lot shall be liable to the Association for all damages to: (i) the Common Area; (ii) any Improvements constructed thereon; or (iii) to any Improvements constructed upon any Lot, the maintenance of which has been assumed by the Association; which damage is caused by the neglect, misuse or negligence of such Owner or any tenant or other occupant of such Owner's Lot or such Owner's guest or invitee. The full cost of all repairs of such damage shall be an Assessment against the Owner's Lot, secured by the liens reserved in this Declaration for Assessments and collectible by any means provided in this Declaration for the collection of Assessments, including but not limited to foreclosure of such liens against the Owner's Lot(s).

2.21. Compliance with Association Restrictions. Each Owner shall comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions shall constitute a violation of this Declaration and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Manager or Board on behalf of the Association or by the Wimberly II Architectural

Control Committee or by an aggrieved Owner. Without limiting any rights or powers of the Association or the Board set out in this Declaration, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of this Declaration, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.21* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.22. Butane and Fuel Tanks. No butane or fuel tank or other structure or facility for the storage of combustible fuel (other than gas grills) shall be placed or maintained on the Property unless approved in writing by the Wimberly II Architectural Control Committee.

2.23. No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Association Restrictions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.24. Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies the criteria set out in Section 13-8-70 of the Land Development Code of the City of Austin and all other applicable governmental requirements. Nothing in this *Section 2.24* is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements.

2.25. No Tennis Courts. No tennis courts shall be constructed on any Lot.

ARTICLE III

THE ASSOCIATION

3.01. Organization. The Association shall be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership. Membership in the Association may not be severed from the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.
- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
 - (i) the right of the Association to suspend the Member's voting right and right to use the Common Area for any period during which any Assessment against such Member's Lot(s) remains past due, and for any period during which a Member is in violation of the Association Restrictions;
 - (ii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
 - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Area and, in aid thereof, to mortgage said Common Area;
 - (iv) the right of the Association to make reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other persons entitled to such use; and
 - (v) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interest of the Association.

3.03. Voting Rights. The right to cast votes and the number of votes which may be cast for election of members of the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- (a) The Owner of each Lot shall have one (1) vote for each lot so owned. In no event shall any Lot be entitled to more than one (1) vote; provided, however, that in the event of the resubdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such resubdivision. No resubdivision shall be effective, for purposes of the Association Restrictions, unless the same is approved by the appropriate governmental entity in accordance with the requirements of Chapter 212 of the Texas Local Government Code then in effect (or its successor statute), and duly recorded in the Official Public Records of Travis County, Texas. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights shall continue to be determined according to the number of original

Lots contained in such consolidated Lot. Nothing herein shall be construed as authorization for any resubdivision or consolidation of Lots; such actions are subject to and require the prior approval of the Wimberly II Architectural Control Committee pursuant to other provisions of this Declaration.

- (b) In addition to the votes to which Declarant is entitled by reason of *Section 3.03(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until such time as Declarant no longer owns any of the Lots.
- (c) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remains past due, for any period during which such Owner or such Owner's Lot(s) is in violation of the Association Restrictions or the Declaration.

3.04. Duties of the Association. Subject to and in accordance with these restrictions, the Association acting through the Board shall have and perform each of the following duties:

- (a) **Association Property.**
 - (1) **Ownership and Control.** To accept, own, operate, and maintain all Common Area, together with all improvements of whatever kind and for whatever purpose that may be located in said Common Area, and all sidewalks, pathways and private driveways and streets located within the Property.
 - (2) **Repair and Maintenance.** To maintain in good repair and condition the Common Area and all lands, Improvements, security devices, and other property owned, leased, or licensed to the Association, including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Property.
 - (3) **Taxes.** To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area to the extent that such taxes and assessment are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (b) **Insurance.** To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.
- (c) **Rules and Bylaws.** To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such Association Rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Common Area. In the event of any conflict between the terms and provisions of the Articles, Bylaws, or any other Association Rules with this Declaration, the terms and provisions of this Declaration are intended to, and shall be controlling.

- (d) Records. To keep books and records of the Association's affairs and to make such books and records, together with current copies of the Association Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (e) Other. To carry out and enforce all duties of the Association set forth in the Association Restrictions.

3.05. Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation. It shall further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) Assessments. To levy assessments as provided herein.
- (b) Right of Entry and Enforcement. To enter at any time in an emergency without notice, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner or any other person or entity, upon any Lot or into any Improvement thereon, or to enter at any time without notice onto any Common Area, for the purpose of enforcing the Association Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Association Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be deemed a special Assessment against such Lot, shall be a lien upon the Lot entered upon and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in *Article VI* hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Association Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Association Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area or Association Property in enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.05(b) (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN**

CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

- (c) Conveyances. To grant and convey to any person or entity any real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any Association Property for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:
- (1) Parks, parkways or other recreational facilities or structures;
 - (2) Roads, streets, walks, street lights, driveways, parking lots, trails, paths and fences;
 - (3) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
 - (4) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
 - (5) Any similar improvements or facilities.

Nothing set forth above, however, shall be construed to permit the use or occupancy of any improvement or other facility in any way that would violate applicable use and occupancy restrictions imposed thereon by the Association Restrictions, or by any governmental authority.

- (d) Manager. To retain and pay for the services of a Manager to manage and operate the Association, including the Association Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.
- (e) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (f) Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Common Area, including, but not limited to, any recreational facilities; to maintain and repair any recreational facilities, easements, roads, roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, fences, ponds,

lakes located within or upon the Property and to maintain and repair other portions of the Property.

- (g) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or Assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Association Restrictions.
- (h) Construction on Association Property. To construct new Improvements on or additions to Association Property, subject to the approval of the Wimberly II Architectural Control Committee.
- (i) Contracts; Property Ownership. To enter into contracts with Declarant or Declarant, and with such other persons or entities on such terms and provisions as the Board shall determine, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.
- (j) Security Services. To provide for and construct and maintain facilities for the provision of security regarding the Property.
- (k) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (l) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area and any Improvements thereon.

3.06. Indemnification. To the fullest extent permitted by applicable law, but without duplication of (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Association, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Association would have the power to indemnify such person against such liability hereunder or otherwise.

3.07. Control by Declarant. Notwithstanding anything to the contrary, Declarant, or its successors or assigns, shall have the absolute right to appoint members of the Board and their successors until the earlier to occur of: (i) one hundred and twenty (120) days after Declarant has conveyed all the

Lots to owners other than Declarant; or (ii) twenty (20) years after the date this Declaration is recorded in the Official Public Records of Travis County, Texas. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

3.08. Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 3.05* hereinabove, the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.09. Merger. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by: (i) the Declarant (so long as Declarant owns any Lots within the Property) only; or (ii) the Declarant (so long as Declarant owns any Lots within the Property) and Members holding at least 70% of the votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of this Declaration. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property. No merger or consolidation will effect a change the rights reserved by Declarant pursuant to the terms and provisions of this Declaration.

ARTICLE IV

INSURANCE AND RESTORATION

4.01. Insurance. Each Owner shall be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies shall be for the full insurable value of the

Improvements constructed upon each Lot, shall contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association shall not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.02. Restoration. In the event of any fire or other casualty, the Owner shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03. Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the Association's rights under this *Article IV*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board and before the commencement of any reconstruction, repair, restoration or replacement, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE V

Wimberly II Architectural Control Committee

Declarant has a substantial interest in ensuring that improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the Wimberly II Architectural Control Committees to the Board as provided in *Section 5.02(a)* below, the Wimberly II Architectural Control Committee shall be acting solely in Declarant's interest and shall owe no duty to any other Owner or the Association.

5.01. Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Wimberly II Architectural Control Committee.

5.02. Wimberly II Architectural Control Committee.

- (a) **Composition.** The Wimberly II Architectural Control Committee shall be composed of at least three (3) and no more than five (5) persons appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause), at any time, all members of the Wimberly II Architectural Control Committee unless such right is transferred in writing to the Board.
- (b) **Submission and Approval of Plans and Specifications.** Two (2) copies of the construction plans and specifications (including but not limited to exterior views, exterior materials, colors and elevation, a drainage plan, a site plan showing the location of any proposed structure or improvement, a landscaping plan, and a driveway construction plan) or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal in the form required by the Wimberly II Architectural Control Committee, and any other information or documents that may be required by the Wimberly II Architectural Control Committee, shall be delivered, together with any review fee which is imposed by the Wimberly II Architectural Control Committee in accordance with *Section 5.02(c)* to the Wimberly II Architectural Control Committee at the offices of Declarant, at 98 San Jacinto Blvd., Suite 220, Austin, Texas 78701, Attn: Wimberly II Property Manager, or such other address as may hereafter be designated in writing from time to time, not less than thirty (30) days prior to the date on which the Owner proposes to commence construction or re-subdivision/consolidation. No re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Wimberly II Architectural Control Committee. The Wimberly II Architectural Control Committee may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Wimberly II Architectural Control Committee or any other entity; information relating to the question of whether any proposed Improvement would

unreasonably obstruct the view from neighboring Lots; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Wimberly II Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Wimberly II Architectural Control Committee, in its sole discretion, may require. Site plans must be approved by the Wimberly II Architectural Control Committee prior to the clearing of any Lot, or the construction of any Improvements thereon. The Wimberly II Architectural Control Committee may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Wimberly II Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

- (c) Adoption of Rules and Regulations. The Wimberly II Architectural Control Committee shall have the authority to adopt such procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder, including rules and guidelines establishing and describing its review procedures, and principles and criteria used in its review. The Wimberly II Architectural Control Committee may amend or modify or supplement its rules and guidelines from time to time as the Wimberly II Architectural Control Committee deems advisable. In addition, the Wimberly II Architectural Control Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Wimberly II Architectural Control Committee and used to defray the administrative expenses incurred by the Wimberly II Architectural Control Committee in performing its duties hereunder, provided, however, that any excess funds held by the Wimberly II Architectural Control Committee shall be distributed to the Association at the end of each calendar year.
- (d) Actions of the Wimberly II Architectural Control Committee. The Wimberly II Architectural Control Committee may, by resolution unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the Wimberly II Architectural Control Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Wimberly II Architectural Control Committee taken at a duly constituted meeting shall constitute an act of the Wimberly II Architectural Control Committee.
- (e) Failure to Act. In the event that any plans and specifications are submitted to the Wimberly II Architectural Control Committee as provided herein, and the Wimberly II Architectural Control Committee shall fail either to approve or reject such plans and specifications for a period of forty-five (45) days following such submission, no approval by the Wimberly II Architectural Control Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such forty-five (45) day period shall not

begin to run until all information required to be submitted by the Wimberly II Architectural Control Committee to assist in its review of any plans or specifications has been received by the Wimberly II Architectural Control Committee. Any failure of the Wimberly II Architectural Control Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Wimberly II Architectural Control Committee's written approval of all requests for variances shall be expressly required.

- (f) Variances. The Wimberly II Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Wimberly II Architectural Control Committee, in its sole and absolute discretion, such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Wimberly II Architectural Control Committee. Plans and specifications which have been approved by the Wimberly II Architectural Control Committee without conditions or exceptions and which reflect deviations from this Declaration shall constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.
- (g) Duration of Approval. The approval of the Wimberly II Architectural Control Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Wimberly II Architectural Control Committee shall be valid for a period of ninety (90) days. If construction in accordance with such plans and specifications or variance is not commenced within such ninety (90)-day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Wimberly II Architectural Control Committee, and the Wimberly II Architectural Control Committee shall have the authority to re-evaluate such plans and specifications in accordance with this Section and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval thereof.
- (h) No Waiver of Future Approvals. The approval of the Wimberly II Architectural Control Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Wimberly II Architectural Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Wimberly II Architectural Control Committee.

- (i) Non-liability of Committee Members. Neither the Wimberly II Architectural Control Committee, nor any member thereof shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Wimberly II Architectural Control Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Wimberly II Architectural Control Committee or one or more of its members, as the case may be.
- (j) Relationship of Wimberly II Architectural Control Committee with Master Architectural Control Committee Established Under the Master Declaration. Pursuant to the terms and provisions of the Partial Assignment, Declarant retained the right to establish the Wimberly II Architectural Control Committee and to appoint and remove all members thereof. The Master Architectural Control Committee established under the Master Declaration has no authority to review, approve, or disapprove any Improvement constructed on the Property until such time as Declarant has assigned its rights to appoint and remove all members of the Wimberly II Architectural Control Committee to the Board.

ARTICLE VI

COVENANT FOR ASSESSMENTS

6.01. Assessments. Each Owner of any Lot, by acceptance of a deed therefor or ownership interest thereto, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant to pay to the Association: (i) Assessments or charges (as specified in *Section 6.03*); (ii) Special Assessments (as specified in *Section 6.04*); and (iii) late charges (as specified in *Section 6.06*). All of such Assessments shall be fixed, established, and collected from time to time as hereinafter provided. The Assessments provided for under this *Article VI* shall be in addition to the assessments levied pursuant to the Master Declaration.

6.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety, and welfare of the Owners, and the maintenance and improvement of the Property or any part thereof, including, without limitation, Common Area, and for carrying out the purposes or rights of the Association as stated herein or as otherwise provided in the Articles or Bylaws. Assessments may be levied to discharge certain maintenance expenses incurred by The Barton Creek ABC West Community, Inc. to maintain a portion of Wimberly Lane, as more particularly described in that certain Restrictive Covenant [Wimberly Lane Maintenance-ABC West, Phase 2], recorded as Document No. 2001035795, in the Official Public Records of Travis County, Texas.

6.03. Establishing Assessments. Each fiscal year, the Board shall estimate the expenses to be incurred by the Association during each year in performing its functions with respect to the Property, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and as between the Lots within the Property, the amount of the Assessments levied against each Lot shall be equal and uniform. The level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable by each Owner to the Association

during the fiscal year in equal monthly, quarterly, semi-annual, annual, or other periodic installments, as the Board determines in its sole discretion, on or before the first day of the applicable period.

6.04. Special Assessments. In addition to the Assessments authorized by *Section 6.03* hereof, the Association may, by vote of its Members as set out in *Section 6.04A* hereof, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Improvement located upon any of the Common Area, or any portion of the Property owned by the Association, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefiting the Association.

6.04A. Vote Required for Special Assessment. Special Assessments levied against the Owner(s) of a particular Lot to cure violations of the Association Restrictions by such Owner(s) shall be deemed approved and authorized automatically upon the occurrence of the events giving rise to such curative Special Assessments. Special Assessments to be levied against all Owners as authorized by *Section 6.04* hereof must be approved by a majority of the total votes of the membership of the Association determined in accordance with *Section 3.03* of the Declaration, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members in accordance with the Bylaws.

6.05. Due Date of Assessments. The first Assessment shall become due and payable on each Lot in accordance with the periodic payment schedule established by the Board in accordance with *Section 6.03*. The due date of any Special Assessment hereunder shall be fixed in the resolution authorizing such Assessment or, if not so fixed or established by other terms of this Declaration, the first day of the first month following the imposition of such Special Assessment. Payments shall be considered delinquent if not paid within five (5) days after their due date.

6.06. Late Charges. If any Assessment is not paid before it is delinquent, the Owner responsible for the payment thereof may be required by the Board to pay a late charge at such rate the Board may designate from time to time, and such late charge (and any reasonable handling costs therefor) shall be a charge upon the Lots owned by the said Owner to which the Assessment relates, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s); provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

6.07. Owner's Personal Obligation for Payment of Assessments. The Assessments and late charges provided for herein shall be the personal and individual debt of each Owner. No diminution or abatement of Assessments shall be allowed for inconveniences arising from the making of repairs or improvements to the Common Area or any Lot, and no Owner may exempt himself from liability for such Assessments and charges through non-use of such Owner's Lot or otherwise.

6.08. Assessment Lien and Foreclosure. All sums assessed or charged in the manner provided in this Article but unpaid, together with all costs and expenses of collection, including reasonable attorney's fees, are secured by a continuing Assessment lien and shall constitute a charge on or against the Lot covered by such Assessment or charge, which shall bind such property in the hands of the Owner, and such Owner's heirs, devisees, and personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment thereof in each such instance, each such lien to be superior and paramount to any homestead or other exemption provided by law. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, and all sums unpaid secured by a first-lien Mortgage securing sums borrowed for the purchase or improvements of the Lot in question, provided such

Mortgage was recorded in the Official Public Records of Travis County, Texas before the delinquent Assessment was due. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment 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 one of the officers of the Association and shall be recorded in the Official Public Records of Travis County, Texas. Each Owner, by accepting a deed to a Lot subject to this Declaration, shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce at any time after such payment becomes delinquent by the non-judicial foreclosure of such lien on the defaulting Owner's Lot by the Association in like manner as a deed of trust or real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Robert D. Burton of Travis County, Texas is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Association may have by law and under the Association Restrictions, including the rights of the Association to institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for 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 trustee's and attorney's fees incurred. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property 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 holding a prior lien on any Lot, the Association shall report to said Mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any first-lien Mortgage, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first-lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Lot Owner from paying assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this paragraph, the Association shall upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release shall be signed by an officer of the Association.

6.09. Exemptions. Notwithstanding any provision herein to the contrary, the Declarant and all Common Area shall be exempt from the payment of any Assessment levied by the Association, pursuant to this *Article VI*.

6.10 Fines and Damages Assessment. The Board may assess fines against an Owner for violations of the Association Restrictions, which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.10* shall be considered an Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located thereon by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges shall be as follows:

- (a) the Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner may, not later than thirty (30) days after the date of the notice, request a hearing before the Board to contest the fine or damage charge; and
- (e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges shall be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot, together with interest as provided in *Section 6.06* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to this Declaration. Unless otherwise provided in this *Section 6.10*, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article VI*.

ARTICLE VII

MORTGAGE PROTECTION

7.01. Notice to Association. An Owner who mortgages such Owner's Lot and any residence or structure thereon shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board may, at its election, maintain such information in a book entitled "Mortgagees of Owners."

7.02. Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours upon one business day's notice (not less than 24 hours).

7.03. Taxes, Assessments and Charges. All taxes, assessments and charges which may become liens prior to first lien mortgages under local law shall relate only to the individual Lots and not to the Property as a whole.

ARTICLE VIII

EASEMENTS

8.01. Right of Ingress and Egress. Declarant, its agents and employees, shall have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

8.02. Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

8.03. Miscellaneous Easements. Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant shall be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this *Section 8.03*. The exercise of the easement reserved herein shall not extend to permitting entry into any residence, nor shall it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

8.04. Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE IX

DISPUTE RESOLUTION

9.01. Agreement to Encourage Resolution of Disputes Without Litigation.

- (a) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Declaration (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 9.02* in a good faith effort to resolve such Claim.
- (b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:
 - (i) the interpretation, application, or enforcement of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
 - (ii) the rights, obligations, and duties of any Bound Party under the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
 - (iii) the design or construction of improvements within the Property, other than matters of aesthetic judgment under *Article V*, which shall not be subject to review.

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 9.02*:

- (i) Owner; and
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; and
- (iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; and
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 9.02 (a)*, unless the party or parties against whom the Claim is

made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

9.02. Dispute Resolution Procedures.

- (a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:
 - (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
 - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
 - (iii) the Claimant's proposed resolution or remedy; and
 - (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
- (b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (c) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 9.02(a)* (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Travis County, Texas.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

- (d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to

abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

9.03. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by the Declarant, except that no such approval shall be required for actions or proceedings:

- (a) initiated while Declarant owns any portion of the Property; or
- (b) initiated to enforce the provisions of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by the Declarant for so long as Declarant owns any portion of the Property.

ARTICLE X

GENERAL PROVISIONS

10.01. Duration. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, and continuing through and including January 1, 2051, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Travis County, Texas. Notwithstanding any provision in this *Section 10.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law

restricting the period of time that covenants on land may be enforced, such provision shall expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.02. Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments shall be allocated on the per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the Lot.

10.03. Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Travis County, Texas, of an instrument setting forth the amendment, which said instrument shall be executed and acknowledged by: (i) the Declarant, acting alone; or (ii) the Declarant and the President and Secretary of the Association certifying that such amendment has been approved by Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association.

10.04. Roadway, Utility and General Fence Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, constructed, erected, and maintained in and on any streets maintained by the Association or areas conveyed to the Association or reserved as Common Area, roadways, sewer lines, water lines, cable television and other communication lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground and fences common to the entire Property, with the right of access to the same at any time for the purposes of repair and maintenance.

10.05. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

10.06. Interpretation. The provision of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property, provided, however, that the provisions of this Declaration shall not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Property. This Declaration shall be construed and governed under the laws of the State of Texas.

10.07. Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon Lots within the Property, so long as such construction is pursuant to proper approval of the Wimberly II Architectural Control Committee.

10.08. Gender. Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

10.09. Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

10.10. Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant, and/or the Association shall have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement shall include both damages for and injunctive relief against the breach of any provision hereof.
- (b) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant, or the Association.
- (c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.
- (d) The failure to enforce any provision of the Association Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

10.11. Construction. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

10.12. Damage and Destruction.

- (a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 10.12(a)* means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.
- (b) Any damage to or destruction of the Common Area shall be repaired unless a majority of the Board shall decide within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said

period, then the period shall be extended until such information shall be made available.

- (c) In the event that it should be determined by the Board that the damage or destruction of the Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.
- (d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a special Assessment, as provided in *Article VI*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.
- (e) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall be allocated on a per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.
- (f) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated on a per Lot basis and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

10.13. The Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "Conceptual Plans") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time without notice to the Owners, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any homebuilder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and it is expressly agreed and understood that no Owner shall be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property.

10.14. Construction Matters. Land development activities and construction activities will occur within and around the Property and such activities will create noise, dust, traffic disruption and general inconvenience to the residents within the Property.

10.15. Views. Views within the Property are not protected. No warranty, representation or guaranty is made to any Owner by Declarant or by any homebuilder or developer of any portion of the Property, that any views from any portion of the Property will be protected or remain the same.

10.16. Warranties and Representations Regarding Improvements. Declarant is not responsible for, nor does it assume or warrant as true, any representation or warranty made by any person who may be associated with the marketing and sale of any residences or other Improvements within the Property. Declarant is not responsible for, nor does it assume or warrant, the quality of construction of any home, building or other Improvements which are not constructed by Declarant. Each Owner has selected or will select a builder to construct such owner's home or other building, and no Owner will be entitled to look to Declarant with respect to any disputed contractual or construction warranty issues which may arise between any Owner and any contractor or contractors constructing a home or building upon such Owner's Lot.

10.17. **Storm Water Drainage.** Each Owner is responsible for complying with all governmental and/or regulatory requirements which may apply with respect to the drainage or detention of storm water within such Owner's Lot. Declarant expressly disclaims any responsibility, representation or warranty with respect to the drainage and/or detention of storm water within any Lot.

10.18. **Wildlife.** Deer and other wildlife are present within the Property. Accordingly, caution should be used when driving, walking or biking on all roadways and/or sidewalks within the Property so as to avoid encounters with such wildlife.

EXECUTED to be effective the 10 day of March, 2004.

DECLARANT:

**STRATUS PROPERTIES OPERATING CO., L.P., a
Delaware limited partnership**

By: STRS, L.L.C., a Delaware limited liability
company, General Partner

By: STRATUS PROPERTIES INC., a
Delaware corporation, its Sole Member

By: [Signature]
John E. Baker, Sr. Vice President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 10 day of March, 2004 by John E. Baker, Sr. Vice President of Stratus Properties Inc., a Delaware corporation, Sole Member of STRS, L.L.C., a Delaware limited liability company, General Partner of Stratus Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said corporation, company and partnership.

(SEAL)



[Signature]
Notary Public State of Texas

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

[Signature]

2004 Apr 15 03:55 PM 2004070709

HAYWOODK \$78.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

**NOTICE OF APPLICABILITY
BARTON CREEK ABC WEST, PHASE II**



AFTER RECORDING RETURN TO:

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

Watershed Protection and
Development Review Dept.
505 Barton Springs Rd., 4th Fl.
Austin, TX 78704
ATTN: Cesar Zavala

BARTON CREEK ABC WEST PHASE II

NOTICE OF APPLICABILITY

Cross reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707 of the Official Public Records of Travis County, Texas, as amended, and that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded as Document No. 2002044488 in the Official Records of Travis County, Texas.

121983-5 03/10/2004

DD C892-0053.01.1A

Heritage Title HT 192.168.168.101 TR 2004070708.001

**NOTICE OF APPLICABILITY OF MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
[Barton Creek ABC West, Phase II]**

This Notice of Applicability of Master Declaration of Covenants, Conditions, and Restrictions [Barton Creek ABC West, Phase II] is made and executed by STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership ("Declarant") and is as follows:

RECITALS:

1. **Applicability of Master Declaration to Property.** This Notice of Applicability is filed with respect to Barton Creek ABC West, Phase II, a subdivision located in Travis County, Texas according to the map or plat recorded as Document No. 200400122 in the Official Public Records of Travis County, Texas (the "Property"). Pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990, recorded in Volume 11324, Page 707, of the Official Public Records of Travis County, Texas, as amended (the "Master Declaration"), and that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions dated February 25, 2002, recorded as Document No. 2002044488 in the Official Records of Travis County, Declarant served notice that portions of the property described on "Exhibit A" to the Master Declaration, upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Declaration.
2. **Property Incorporated Into Development.** The provisions of the Master Declaration shall apply to the Property. The Property is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Declaration and the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges set forth in that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West Phase II, which is being recorded contemporaneously herewith in the Official Public Records of Travis County, Texas (the "Development Area Declaration")
3. **Maintenance of Private Roadways.** The Declarant hereby designates Lot 49 of the Property, which includes "Wimberly Lane", "Swirling Wind Cove" and "Travertine Cove" (the "Private Roadways") as Common Area (as such term is defined in the Development Area Declaration) of The Wimberly II Community, Inc., a Texas non-profit corporation (the "Association") for the benefit of the Owners within the Property (the "Benefited Property"). The Benefited Property shall be assessed pursuant to the Development Area Declaration for the estimated cost and expense necessary to maintain, repair, and manage the Private Roadways, including all drainage improvements associated therewith, in accordance with that certain Private Street Declaration [Barton Creek ABC West Phase II], recorded in the Official Public Records of Travis County, Texas.
4. **Integrated Pest Management Plan.** A pest management plan (the "Plan") has been developed for the Property which consists of guidelines for the control of pests. Each Owner of a Lot within the Property shall be required to comply with the guidelines set forth in the Plan, as amended from time to time. A current copy of the Plan is attached as Exhibit "A".
5. **Miscellaneous.** This notice constitutes a notice of applicability under Section 10.05 of the Master Declaration. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Master Declaration.

EXECUTED to be effective as of the 10 day of March, 2004.

DECLARANT:

**STRATUS PROPERTIES OPERATING CO., L.P., a
Delaware limited partnership**

By: **STRS, L.L.C., a Delaware limited liability
company, General Partner**

By: **STRATUS PROPERTIES INC., a
Delaware corporation, its Sole Member**

By: John E. Baker
John E. Baker, Sr. Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this 10 day of March, 2004 by John E. Baker, Sr. Vice President of Stratus Properties Inc., a Delaware corporation, Sole Member of STRS, L.L.C., a Delaware limited liability company, General Partner of Stratus Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said corporation, company and partnership.

(SEAL)



John E. Baker
Notary Public State of Texas

EXHIBIT "A"

BARTON CREEK ABC WEST, PHASE II INTEGRATED PEST MANAGEMENT PLAN

Integrated Pest Management, IPM, is an approach to pest control that employs a progression of physical, mechanical, biological and chemical tactics to keep pest numbers low enough to prevent intolerable damage or annoyance. Management practices at Barton Creek reflect the concepts of Integrated Pest Management. The IPM for ABC West, Phase II was developed with consideration for Nonpoint Source Pollution Abatement (NSPA) and Natural Resource Management.

Information from various governmental entities, public organizations and professional groups was utilized in developing these programs. The Lower Colorado River Authority (LCRA) and the Environmental Protection Agency (EPA) were the primary sources for developing the NSPA program along with research conducted on site which will be instrumental throughout our project. IPM plans considered recommendations from the City of Austin (COA), EPA, and the Texas Agricultural Extension Service.

PROJECT DESCRIPTION

Barton Creek ABC West, Phase II is a residential subdivision consisting of 47 single-family lots, one landscape lot, one open space lot and one private street lot. The 120.245 acres (gross) comprising ABC West, Phase II are located in southwest Travis County approximately 3,500 feet northwest from the intersection of Barton Creek Boulevard and Wimberly Lane. The landscape is to include an estimated 3.978 acres of turf (lawn) areas and 0.995 acres of ornamental landscape areas. It is estimated that 3.43 acres (149,250 square feet) of the developable lots will consist of built structures. There are no septic drain fields or wastewater irrigation fields proposed for this project. Environmental features and pesticide/fertilizer-free buffer zones are shown on Attachment A.

GENERAL

In general, non-toxic and less persistent control products should be employed in controlling pests before more persistent products are considered. More persistent control products should only be used after all other tactics have been employed. It is advisable to employ a pest control professional, familiar with IPM approaches, before resorting to highly toxic and persistent chemicals. Regularly scheduled pesticide application is not Integrated Pest Management.

CONTROL METHODS

PHYSICAL:

Physical methods include trapping, hand destruction or removal and harassment. Physical removal of pests is usually limited to the occasional crabgrass plant. To avoid unnecessary weed seed contamination and fire ants, all loam used for topsoil should come from three feet or more below the surface.

CULTURAL:

The microenvironment for plants can be modified to ensure the best possible growing conditions. This in turn will result in healthy plants are resistant to attack or invasion, which requires fewer chemicals to fight off pests and weeds. The composition of the planting community can be altered or maintained by the types of cultural practices employed. Cultural practices should be modified and adjusted to reduce pest populations. A healthy plant is our best defense against wear, pests and weeds. To achieve quality plants the following cultural practices are utilized at Barton Creek.

Irrigation:

Irrigation is one of the most critical, but difficult, cultural practice to control. Sprinklers should be programmed and controlled for their local and specific soil type, ground slope, and grass type, in which they are located. Scheduling sprinkler head controls result in an irrigation program that conserves irrigation water. In the event that more irrigation is needed, a computer controller should water in multiples of six to eight minutes spread throughout the total cycle. This minimizes percolation and runoff. Watering should occur during the early morning hours to prevent evapotranspiration and excessive water usage. Proper watering will reduce problems such as anaerobic soils, turf moisture stress, heat stress and weed seed germination, while reducing turf susceptibility to insect pests as well. System accuracy should be manually verified and monitored.

Mowing:

In areas predominately occupied by weed species repeated mowing kills most weed seedlings, prevents seed production, and reduces rhizome growth and regrowth of shoots.

Fertilization:

An analysis of the soil should be conducted and a fertilization program should be designed based on the nutrient need of the landscape. Fertilizer shall not be applied when rainfall is forecast, due to the possibility for the nutrients to escape the site in stormwater runoff. All fertilizer applications shall be watered in lightly several times prior to rainfall, so that the nutrients are incorporated into the soil. The use of slow release granular fertilizers should be used to promote healthy plant growth. The nutrient requirements vary with the amount of water applied, amounts of nutrients in the water, soil nutrient holding capacity, season, growth rate, turfgrass species and plant species

pH correction:

The soils on site are basically alkaline in reaction. Any chemical application meant to adjust the pH shall be based on a soil analysis and needs of the plants. Sulfur and/or potassium magnesia sulfate may be used (during cool weather) to lower the pH if it is found to be too high for specific plants. These chemicals shall be watered-in with light irrigation to incorporate into the soil soon after

BIOLOGICAL CONTROLS:

Biological controls are quickly gaining more commercial acceptance as viable alternatives to chemicals. The EPA publication "Integrated Pest Management for turf grass and Ornamentals" lists the latest proven techniques for biological and cultural controls.

Endophytes

Insecticide use has been reduced more than 50% through the use of endophyte-enhanced turfs. Perennial rye grass and tall fescue varieties used for overseeding and shade areas contain high levels of endophytic fungi, which naturally repel surface feeding insects such as cutworms and pillbugs. A fundamental protocol is to utilize biologic and organic controls in all cases where effective methods are available, rather than use of chemical methods.

Composted Organic Matter

Recent research suggests that composted organic matter and some organic fertilizers may reduce plant disease incidence. This is being studied for further implementation.

Pest Prediction Models

More precise models for the prediction of disease development are being developed today because of advancements in computer technology and weather gathering equipment. Most turfgrass diseases occur under specific environmental conditions, provided there is a susceptible host and a virulent pathogen present. The key environmental parameters are: air temperature, soil temperature, soil moisture, air movement, leaf wetness and relative humidity. Although not all of these environmental

factors are involved in the development of every disease, at least two of them are involved in all disease development. Mathematical models to predict disease occurrence can be developed by measuring these factors, recording them over a period of time, and correlating them with disease outbreaks. These models can then be used to make more accurate fungicide applications based on environmental conditions, rather than applying them on a calendar or preventative basis.

Beneficial Insects & Biological Insecticides

Beneficial insects and biological insecticides such as: Ladybugs, Green Lacewings, Trichogramma Wasps, Praying Mantis, Nematodes, *Bacillus thuringiensis*, diatomaceous earth, and pyrethrums are utilized on ornamentals, natives and turfgrass for various pests throughout the year.

CHEMICAL CONTROLS:

In an effort to eliminate the potential water quality impacts of the landscape operations chemical applications should continuously be reviewed for overall environmental safety. Products have been approved for use, disallowed or had application restrictions imposed on considerations associated with the following parameters:

- No class A carcinogens are used. Class B carcinogens are allowable on a specific curative use basis only.
- Literature concerning level of toxicity to birds, fish and other wildlife is checked.
- Leaching and runoff potential for each product are taken into account. Use of chemicals with high water solubility are minimized.
- Rate, percent active ingredient area to be treated is considered.
- EPA health Advisory levels are reviewed.
- Persistence in environment is examined for minimum persistence.
- Curative, rather than preventative, insecticide programs are utilized to minimize chemical control applications; other programs at discretion of Environmental Committee.
- Integrated Pest Management (IPM) will establish control requirements.
- Fertilizer requirements will be cross-verified with soil and tissue testing and visual analysis.
- Best management practices will be employed for application of any pesticide or fertilizer.
- Application rates and total quantities of nutrients applied are as critical to protection of water quality as types of fertilizers to be utilized.

The EPA is currently reviewing many of the products used in the turf and ornamental industry, but this research and evaluation is not expected to be completed for several years. As new information is made available it may be necessary to amend or alter the current list of recommendations. In all cases when chemical controls are used in the landscape, care shall be taken to avoid application within two days of expected rainfall, and buffer zones (a minimum of 50' wide) shall be used in areas adjacent to highly maintained turfgrass. Pesticide recommendations are divided into three tables (see table list).

Tips for using pesticides:

(Excerpted from EPA, Prevention, Pesticides and Toxic Substances).

Sometimes, even with good lawn care practices, weather conditions or other factors can cause pest problems to develop. Pesticides can help control many lawn pest. But pesticides have risks as well as benefits, and it is

important to use them properly.

The chemicals we call pesticides include insecticides, herbicides, and fungicides. These products are designed to kill or control pest insects, weeds, and fungal diseases. Pesticides can be very effective. But do not be tempted to rely solely on pesticides as a quick-fix solution to any lawn problem. Serious, ongoing pest problems are often a sign that your lawn is not getting everything it needs. In other words, the pests may be a symptom of an underlying problem. You need to correct the underlying problem to reduce the chance that the pest will reappear.

All pesticides are toxic to some degree. This means they can pose some risk to you, to your children and pets, and to any wildlife that venture onto your lawn, especially if these chemicals are overused or carelessly applied. Pesticides can also kill earthworms and other beneficial organisms, disrupting the ecological balance of your lawn.

Before using any pesticide, be sure to review these basic rules

1. Take safety precautions. Never assume a pesticide is harmless.

Read the entire label and follow its instructions. Use only the amount directed, at the time and under the conditions specified, and for the purpose listed.

Be sure to wear protective clothing-like gloves, long sleeves, and long pants-indicated on the label. Wash this clothing separately before using it again.

Keep children and pets away from pesticides, and make sure no one goes on a treated lawn for at least the time prescribed by the pesticide.

Store and dispose of pesticides properly, according to the label directions and any state and local regulations.

2. Use pesticides to minimize pests, not eradicate them. The latter is often impossible and unnecessary.
3. Be sure you have accurately identified the pest so you can choose the best pesticide for the job and use it most effectively. Obtain professional advice "if you are in any doubt".
4. "Spot treat" whenever possible. In most cases, it is not necessary to treat the whole lawn with pesticides if the problem is confined to certain areas. Spraying more than necessary is wasteful and can be environmentally damaging.

TURF TYPES:

The following turf types are recommended for use in the Barton Creek area. These grasses are well suited to this environment and provide a superior and very dense vegetative buffer.

419 Hybrid Bermuda Grass

419 Hybrid Bermuda Grass is utilized. This is a very aggressive dense turf with the ability to handle heavy traffic and recover quickly. This turf serves as an excellent vegetative buffer between development and critical water quality zones due to its ability to filter large amounts of suspended particles in storm water runoff by trapping soil and contaminants in the thatch layer.

Prairie Buffalo and 609 Buffalo Grass

New hybridized Buffalo grass varieties have recently been developed which are extremely drought resistant and require very little maintenance. This grass provides good vegetative covering for all climates, thus acting as a good erosion barrier, and is of course a native grass, forming a much more dense vegetative buffer than non-hybrids.

Weeping Love Grass/Muhli Grasses/Bluestems/Gramas (Native Ornamental Grasses)
Native grasses are used where no maintenance, fertilizers, pesticides or herbicides are utilized. It is dense and tall, is an excellent buffer vegetation.

Tall-Fescue

Endophyte enhanced turf, tall fescues are being used in high shade, low maintenance requirement areas

PEST TYPES

INSECTS

Insects listed below may be found as indoor household pests or as yard pests. Biological control will be the preferred preventative method for most insects. Bioinsecticide, Steward BT and Vector will be the main control chemicals on a preventative basis during the warm season. These are complete biological products with no detrimental side effects. In cases where biological control cannot limit infestations to tolerance levels, chemical controls may be used. Orthene and Sevin may be used when tolerance level is exceeded.

Chemical applications should be made only if infestation is excessive. Control should be with only pyrethroid-type insecticides. Beneficial insects, such as Ladybugs, Praying Mantis, LaceWings, and beneficial nematodes should be released to keep harmful pests to a minimum. No inorganic chemical control is permissible, and should be utilized only as a final resort by trained professionals..

Fire ants represent the only preventative chemical control necessary. Logic or Award may be applied twice annually to keep ants within the tolerance level. When the level is exceeded spot treatments of Orthene are used on an individual mound basis.

Fire Ants Solenopsis invicta

The red imported fire ant is a tropical insect that was accidentally introduced into the United States in the 1930's and has spread unchecked across the Southeast and into Texas. Fire ants disperse naturally through mating flights that usually occur in the spring and fall, but may occur anytime warm humid conditions exist, even during the winter. Fire ant queens are also dispersed by the movement of infested nursery stock and turf sod, and even by cars or other vehicles. Fire ant colonies are known to raft to higher ground during floods. Fire ants are a serious pest because of their fiery sting, which they can inflict repeatedly. Their characteristic cone-shaped mounds usually indicate the presence of fire ants. The only way to effectively control or suppress fire ants is to use a method that will stop egg production by the queen(s). Killing workers will have no lasting effect on contact with the queen, is not a long-term solution. The ineffective use of pesticides, especially in environmentally sensitive areas, should be avoided.

Physical control tactics will include the use of hot water to drench individual fire ant mounds. Mounds will be drenched mid-morning with at least a gallon of hot water on the sun-side of the mound in an attempt to kill queen(s). Drenched mounds will be rebuilt by surviving workers but the colony will soon disperse if the queen is killed. If mounds persist, it will prompt the use of the next control tactic. There are no mechanical control tactics available to control fire ants. Biological control tactics include the use of nematodes (*Neopleotana Carpocapsae*), which are slender, microscopic, unsegmented worms these can be found under the product name ANTidote. This nematode has been cultured to hunt, seek, and destroy soil-boring fire ants by invading ant colonies. Non-toxic and less persistent control tactics will include the broadcast of fire ant baits such as LOGIC, followed by the use of products containing pyrethrums and diatomaceous earth as a mound drenched in a manner as described under physical control tactics.

Fire ant baits are designed to be attractive to foraging fire ants and eventually become passed to the queen(s). The effect of the bait will be to neutralize the queen by stopping egg production. Because fire ants will not forage when ground temperature is below 70 or above 95 degrees, and because the baits will not remain

attractive if wet, care will be taken to apply the baits when the soil and vegetation is warm and dry. As fire ant baits require several weeks or months to affect colonies, the next control tactic will only be prompted by the persistence of mounds over a long period. More persistent chemical control tactics will include the use of liquid drenches or dusts containing organophosphates for individual mound treatments.

Termites *Reticulitermes flavipes*:

Subterranean termites are social insects that live in colonies of winged reproductive, sterile workers and soldiers. Overcrowded conditions prompt the reproductive to swarm, usually during the first warm humid days of spring. Winged termites are often confused with ants but their equal-sized pair of wings can identify them. It is important that a positive identification be made of suspected termite infestations. Subterranean termites are different from other termites in that they must have regular contact with moisture. This is generally accomplished by building earthen tubes to the soil. Water leaks in structures provide a good environment from which termites can build tubes. In most structures, these tubes are visible on exterior walls, but they may be present on interior walls as well if termites have gained access through cracks in slabs. The important first step in a termite control program is the elimination of conditions that favor termite survival. These steps include the removal of wood debris around structures, eliminating areas of earth to wood contact and constructing barriers to termite entry. It is also important to regularly monitor structures for signs of moisture, damaged wood or earthen termite tunnels and to only act if these signs are present. The most vulnerable stages of the termite colony are the eggs and immature larvae.

Physical control tactics will include the plugging of cracks and crevices in structures that may provide access. Any exterior feature that leaks water such as guttering and water pipes will be repaired. There are no mechanical control tactics currently available to control termites. However, sand barriers have been tested as a deterrent to tunneling and may soon be recommended as a control alternative. There are no biological control tactics currently available to control termites. Chemical control tactics will involve the use of toxic, long-lasting products and should be applied by a professional only.

Fleas *Ctenocephalides felis*:

Fleas are associated with warm-blooded animals and pass through four life stages: egg, larva, pupa and adult. Optimal flea development is at 65 to 80 degrees F, with a relative humidity of 70%. Hot dry summers reduce flea populations while cool rainy weather increases populations. When adult fleas emerge from pupae, they immediately seek a blood meal from warm-blooded animals. After mating, females lay eggs on hosts or on their sleeping areas. Eggs hatch into larvae within 12 days and usually feed on organic debris for 8-24 days. Pupae usually emerge into adults in 5-7 days. If conditions for development are unfavorable, larvae can live for up to 200 days and pupae for up to one year. An effective control strategy is to arrest flea development before the pupae stage to prevent explosive population growth when optimal conditions occur.

Physical control tactics will include combing and bathing of pets, and vacuuming or washing of rugs, carpets, furniture and pet sleeping areas. The number of fleas captured in combs is to be used as an indicator of the overall flea population and should be monitored. When fleas reach annoying levels, and fleas captured in comb increases, the next control tactic is prompted. Mechanical control tactics will include the screening of pets from areas where fleas congregate or where vacuuming or washing would be difficult. If flea monitoring indicates mechanical controls have not decreased the flea population, the next control tactic is prompted. Note: Some non-toxic control products work mechanically, but are included in the non-toxic category. Biological control tactics include the use of nematodes (*Neopleotana Carocapsae*), which are slender, microscopic, unsegmented worms (see fire ants). Non-toxic and less persistent control tactics will include dusting pets and where they frequent with products containing pyrethrum, silica aerogel or diatomaceous earth. Yards or areas where pets frequent outside will be sprayed with products containing insecticidal soap, pyrethrum or rotenone. An insect growth regulator will be added to the spray before application.

More persistent chemical control tactics will include using pet collars containing organophosphates, and the

use of pyrethroids to control fleas outside. The use of more persistent chemicals should be considered seriously, with no action being one option.

Product list: Dichorvos

HARTZ
Class: I

Mosquitoes *Order Diptera, Family Culicidae:*

Adult mosquitoes are small, slender, long-legged flies with a long piercing mouthpart called the proboscis. Mosquitoes develop through four distinct stages: egg, larva, pupa and adult. Adult females feed on animal blood for the protein needed to produce eggs. Eggs are laid singly or in clumps on still or slow-moving water. Some mosquitoes lay eggs in temporary water basins such as tree holes or at the edges of flood prone areas. Mosquito eggs may lie dormant for months before hatching, but under most circumstances hatch within 2 to 6 days. The aquatic larva and pupa states each take from 4 to 10 days to develop and represent the most vulnerable stages. Adults can live up to 2 months after emergence. Most mosquitoes die within yards of where they emerged. The most effective method of controlling mosquitoes is to limit the number of water basins where eggs can hatch. Examples of temporary basins include cans and jars, clogged roof gutters, used tires, plant saucers, plastic sheeting, and wheelbarrows. Larger, more permanent water basins can be drained or filled in. However, not all water basins can or should be altered for environmental reasons. In addition, the excessive use of fertilizers should be discouraged as it encourages algae blooms which limit native fish populations allowing mosquito populations to rise.

Physical control tactics will include the use of screen on windows and doors. Electric "bug zappers" will not be used as they are not effective at reducing mosquito populations because they only target adults, and affect non-target insect populations as well. Mechanical control tactics will include the use of suffocating surface film where practical. These will include those basins not subject to runoff. The films to be used will be highly refined and biodegradable, with no effect on human or non-target species. Biological control tactics will include the use of mosquito-eating fish in areas not subject to runoff. Examples of non-runoff areas include backyard pools and galvanized stock tanks. Least toxic and less persistent chemical control tactics will include the use of the *Bacillus thuringiensis israelensis* or pyrethrum larvicides. This product will be applied to water basins where mosquito larvae develop.

Mealybugs and Whiteflies *Order Homopter, Family Pseudococcidae, and whitefly, Order Homopter, Family Aleyrodidae:*

Mealybugs and whiteflies are common sap-sucking pests on indoor and outdoor plants. Both are sessile on plants during at least a part of their life cycle and both produce a wax covering which are easy to spot. Whiteflies develop into conspicuous winged adults, while mealybugs produce sessile females and inconspicuous winged males. Eggs are laid in clusters on the plant and the development to adult averages from four to five weeks. While mealybugs are sensitive to cold and only survive year round on indoor plants, whiteflies are more tolerant and are present on outdoor plants well. Mealybugs may produce 3-4 generations a year, while whitefly populations are capable of extremely large populations. Tolerance to mealybug and whitefly varies greatly between plants, while the most affected will have stunted, chlorotic leaves and loss of vigor. The honeydew produced by both pests may grow a black fungus called sooty mold that is unsightly but harmless.

To minimize infestations of whiteflies and mealybugs, it is important to limit over-wintering sites by removing weeds and using slow-release fertilizers. The sessile stages of both pests are the most vulnerable, but whitefly adults are also attracted to yellow sticky traps. Physical control tactics will include the use of yellow sticky traps. This will monitor the population of whiteflies and prompt the next control tactic when populations increase. Rubbing alcohol will be used to dissolve the wax covering of sessile stages. Mechanical control tactics will include the proper screening of plant areas to prevent pest entry. Weeds will be managed around exterior plants to limit over wintering sites or alternate host sites. Biological control

tactics for control of whiteflies will include the release of green lacewings, *Chrysoperla rufipes*, on exterior plants, and the whitefly parasite, *Encarsia formosa*, on interior plants. Mealybug control tactics include the release of mealybug destroyers, *Cryptolemus montrouzieri*. Increase in the number of mealybugs or whiteflies following the establishment of natural enemies will prompt the next control tactic. Non-toxic and less persistent control tactics will include the use of horticultural oils, liminoid oils, or insecticidal soap for both pests. Only the increase in the number of pests will prompt the next control tactic. More persistent chemical control tactics will include the use of organophosphates and pyrethroids that are less selective against natural enemies.

Aphids Order Homoptera, Family Aphididae:

Aphids are worldwide in distribution with many different species associated with many different plants. They can cause damage to many common ornamental and vegetable plants, either indoors or out, weakening them to the point where they are susceptible to other pests, or to plant diseases that the aphids may carry. Aphids are small, sap-sucking pests that in nature are easily kept in check by insect predators and parasites (natural enemies). Frequently ants "tend" and protect aphids from natural enemies because of their honeydew, a sugary solution secreted by aphids. An ant control plan may be needed so that the natural enemies can work. Aphids produce many generations under warm conditions, only entering the egg stage during the winter. They usually complete their life cycle within 30 days. Indoors, if conditions remain favorable, they may never enter the egg stage with unfertilized females giving birth to live young, which in turn can give birth upon maturity. Under favorable conditions, aphid populations can increase very rapidly. Other than the egg, there is no vulnerable life stage, so it is important that plants cannot be under stress or over fertilized. Plant locations should be selected carefully and slow-release fertilizers used. Generally, a healthy plant can tolerate a small aphid population. An effective control strategy is to monitor aphids frequently, either by inspecting plants or using sticky traps, so that increasing populations can be identified before they become damaging.

Physical control tactics will include the pruning and washing of infested plant sections. Sticky adhesive barriers may also be used to restrict ant movement into plants if they are thought to be a problem. Mechanical control tactics will include the proper screening of greenhouses or sunrooms where indoor plants are kept to prevent invasion by aphids from outside. Weeds will be managed around exterior plants to reduce aphid overwintering sites. Biological control tactics will include the release of green lacewings, *Chrysoperla rufipes* on exterior plants and parasitic wasps (numerous genera including *Aphidius*) on interior plants. The use of non-toxic control tactics will be limited to spot applications and used only before releasing biological control tactics, as they affect these biological agents and other natural enemies. Supplemental feedings of sugar/protein diets may be used to increase egg laying of natural enemies. The number of aphids will be monitored and a rapid increase in the population will prompt the next control tactic. Non-toxic and less persistent control tactics will include the use of dormant oils in the winter, and spot application of light horticultural oils, liminoid oils, insecticidal soaps or pyrethrin/rotenone sprays during the growing season. Only an increase in the aphid population will prompt the next control tactic, with non-action one of the options. More persistent chemical control tactics will include the use of organophosphates and pyrethroids that are less selective against natural enemies.

Sod Webworm Crambinae

The adult stage of the sod webworm is the lawn moth. Night feeders, sod webworms chew off grass blades close to the ground, and then pull the blades into their silken tunnels. Symptoms of infestation are small, saucer-shaped, brown patches on the turf surface. Larvae feed on most turfgrass species. Sod webworms overwinter as larvae. In the spring the worm begins to feed, followed by a pupa stage, then after approximately 2 weeks the moth stage. Soon after, female moths lay approximately 500 eggs. These eggs hatch in about 6 days. Four to five weeks are then required for the larvae to complete their growth. Normal adult to adult life cycle is 6 to 8 weeks. In the south there may be 4 or more generations per year. Early detection and control is critical to prevent damage. Many biological controls and inorganic chemicals are

effective controls. Damage and control periods are between April and late October.

Army Worm *Noctuidae*

There are two main species of army worm, the common army worm (*Pseudaletia unipuncta*) and the fall army worm (*Spodoptera frugiperda*). Both are very aggressive nocturnal feeders. Life cycle starts with eggs being laid on leaf blades. Larvae feed on leaf blades for 2 to 3 weeks, then burrow 2 to 3 inches into the soil and pupate. Adults emerge in 10 to 14 days. There may be 5 to 8 generations per year in the south. Army worms feed on most turfgrass species especially Bermuda grass. NO CONTROL LISTED.

Cutworm *Noctuidae*

Like the other worms cutworms feed nocturnally on most turfgrass species. Leaf blades are again the food source of the cutworm. The worms curl up into a ball approximately 1 inch below ground level during the day. Adult moths do no damage but do hint of future infestations. Three to five generations are possible in the South. Biological or chemical control must be initiated as early as possible in the life cycle to prevent excessive damage. Control period ranges from March to October.

Grub Worms *Phyllophaga spp.*

The main encountered grub is *Atenius spretulus*. This grub is a major pest mainly in St. Augustine grass, but will invade most turfgrass species. Grubs are root feeders and cause damage to plants related to root loss, such as wilt, loss of nutrient storage and lack of stabilization. Grubs are especially damaging to home lawns. Adult grubs are beetles. They emerge in the spring to summer. Larvae hatch from eggs and feed on roots to four inches deep. Life cycles range from a few months to three years. Control periods for grubs are March through May and late July through August. Biological controls are being developed. Chemical inorganic control is currently quite effective if timed correctly.

INSECTICIDES:

TRADE NAME	COMMON NAME	TYPE	FORMULATION	PEST CONTROLLED	COMMENTS/ RESTRICTIONS
Steward	Bacillus Thuringensis	Bio	WP	Sod webworm, Army worm, Cutworm, Grub worm	Biological Worm Control
Mosquito Dunks	Bacillus Thuringensis Israelensis	Bio	WP	Mosquitoes	Biological Mosquito Control
Safer	Potassium Salts of Fatty Acids	Bio	EC	Aphids	Biological Pest Control
Logic/Award	Fenoxycarb	Injest	G	Fire Ants	Growth Regulator
Sevin	Carbaryl	Contact	G, P, EC	Fire Ants, Fleas, Mosquitoes, Aphids, Mealy Bugs, Cut worms, Army worm, Grub worm	Broad Spectrum
Organic Plus	Pyrethrum/Diatomaceous	Contact	WP, G	Fire Ants, Mealybugs, Fleas Army worm, Grub worm, Sod webworm, Army worm	Synthetic Biological
Orthene	Acephate	Con/Sys	P, G	Aphids, Fire Ants, Sod webworm, Army worm, Cut worm, Mealy bugs Whiteflies	Broad Spectrum

EC – Emulsifiable Concentrate
WP – Water Dispersible Granule

F – Flowable

P – Powder

G – Granular

KITCHEN PEST CONTROL

The insects that probably evoke the most disgust for average family are the lowly cockroaches. There is not much good to say about them except they are pests that really can be reduced if all aspects of IPM (integrated pest management) are employed. Frequently, the steps taken to reduce roaches will also reduce the number of ants and other insects that invade your home from time to time.

There are five species of cockroaches with German, American and brown banded being the most common. Roaches are tropical insects that have adapted to living with man by seeking areas where they can get warmth and moisture, like your kitchen and bathroom. Female roaches glue egg cases, called ootheca, to the surfaces of any dark place. The average development time from egg to adult is 103 days.

Steps in an IPM control program:

1. Good sanitation is the first step in an IPM program. Roaches are looking for food and water when they enter your home, so it makes sense to clean up things before they get to it. Cleaning the bottoms of chairs and vacuuming carpets will also reduce the roach's food supply.
2. To keep roaches out of your home in the first place, the sealing of cracks and crevices and the screening of windows and vents will help. This will also work to keep out ants and the crickets that come in during the fall.
3. Use non-toxic roach traps (D-Con, Raid Roach Traps are two you can look for). This will give you an idea of just how many roaches are infesting your home. This will also reduce the number that can reproduce.
4. If you find you have a roach problem then chemical controls can be applied. Normally these include the insecticidal dusts and sprays, insecticidal baits and insect growth regulators.
 - a. Insecticidal dusts are applied to the cracks and crevices where roaches hide and live. They include boric acid powder (Roach Rid), diatomaceous earth (Perma Guard), silica aerogel and pyrethrum powder (Drione), and in many other combinations and forms, such as aerosols. Diatomaceous earth and silican are absorptive and abrasives, boric acid is a stomach poison and pyrethrum is a botanic nerve poison. All are generally safe to use (avoid inhaling dust) but do not provide immediate control.
 - b. Insect sprays (Raid, Ortho Home Pest Killer, etc.) contains methylcarbamates, organophosphates or pyrethroids (synthetic pyrethrum) which kill faster than dusts, but can be toxic to us as well. At least on aerosol (Bengal) contains a pyrethroid which dries to dust after application. Roaches and other pests have developed resistance to many insecticides (they don't work as well) because of overuse. Foggers should be avoided for roach control because they waste much of their active ingredient while unnecessarily exposing your family.
 - c. Insecticide baits (Max, Combat) contain slow-acting poisons that are placed in bait stations designed to attract roaches. They work faster than dusts and are a good alternative to the sprays.
 - d. Once your roach population has been reduced using one of the direct control products, then insect growth regulators (containing fenoxycarb or hydroprene) can be applied (as spray) to prevent the survivors from producing the next generation.
5. Follow steps 1 through 3 before applying control products again. Roaches and other insects that invade your home will be controlled if all aspects of an IPM program are followed on a regular basis.

BIOLOGICAL CONTROL UPDATE - Parasites (*Comperia spp.*) and insect-eating nematodes

(*Steinemaema carposcapsae*) have been successfully home-tested for control of brown banded and German cockroaches and are now commercially available.

WEED SPECIES

Please note that all weed species should first be initially eradicated by hand pulling techniques. All plant parts, including rhizomes, must be removed. This is best achieved when soils are moist. It may be necessary to hand pull populations several times to obtain control. Surrounding seed sources should be eliminated where possible to prevent continual re-invasion. A thick layer of mulch in planting beds will also help to prevent new weeds from occurring.

Crabgrass (*Digitaria*)

There are two crabgrass species of concern in the southern United States. Smooth Crabgrass (*Digitaria ischamum*) and Hairy Crabgrass (*Digitaria sanguinalis*). Both are annual grasses that emerge in early spring and die out at the first killing frost. Crabgrass is extremely aggressive and a prolific seed producer. Crabgrass favors compacted, thin, low mowed areas and grows much more quickly than most turfgrass species. Populations increase dramatically from year to year without treatment. Crabgrass will also flourish under drought, heat and traffic stress conditions. Crabgrass can be controlled effectively by use of an early spring pre-emerge. Escape plants can also be controlled by using specific or selective post-emerge chemicals following germination throughout the spring and summer.

Goosegrass (*Eleusineindica*)

Goosegrass is very similar to crabgrass in that it enjoys the same conditions to prosper. High heat, drought, traffic, low fertility and compacted soil are factors contributing to proliferation of the weed. Goosegrass, like crabgrass, demonstrates prostrate growth habits, excessive seed production and growth speed in excess of turfgrasses. Goosegrass also known as Crowsfoot and Silver Crabgrass is a summer annual in the south. Goosegrass is more difficult to control than crabgrass. When on a regular pre-emerge program most Goosegrass will be controlled but if post-emerge applications are needed generally it will be more difficult to control than crabgrass.

Nutsedge (*Cyperus esculentus*) (*Cyperus rotundus*)

Two types of nutsedge, purple and yellow, present a problem to turfgrass. Purple tends to be the most difficult to control and the most prolific spreader. Yellow is slightly less of a problem, but is still very difficult to eradicate. Both are perennial summer weeds possessing underground nuts connected by rhizomes. This nut/rhizome combination gives the plant a unique ability to survive herbicides and impossible to control by pre-emerge alone. This weed, like others, does very well in adverse turfgrass conditions due to lack of turfgrass competition. In some cases soil removal is required to eradicate the weed.

Dandelions (*Taraxacum officianale*)

Dandelions are perennial winter weeds with deep tap roots and excessive vertical growth habits. They are generally not a major problem in frequently mowed areas, but where dormant turf is present and no mowing occurs, problems become apparent. Pre-emerge control of Dandelions is erratic to poor at best. Post-emerge control is highly effective if done at early germination stages. In central Texas this weed becomes a problem in late winter to early spring soon dying out as summer heat approaches.

Curly dock (*Rumex crispus*)

This is also a winter perennial weed. Low prostrate growth with a long taproot is prominent with dock. The plant has very large spatulate shaped leaves that spread up to one foot in diameter. Pre-emerge control is erratic. Post-emerge control is effective at early stages of growth.

Shepards purse (*Capsella bursu-pastoris*)

This is a winter annual weed with a vertical growth habit, long tap root and excessive seed production. This plant is also difficult to control with pre-emerge application. Post-emerge treatment is effective but also erratic due to minimal leaf surface for chemical contact. High maintenance areas rarely exhibit infestation.

Chickweed (*Stellaria media*)

Chickweed is an annual winter weed with a low branching growth habit. This weed is generally easy to control with both pre-emerge and or post-emerge treatment. Chickweed is not a problem in areas of high maintenance.

Henbit (*Lamium amplexicaule*)

Henbit is an annual winter weed with vertical growth habit. This weed is also easily controlled by pre-emerge or post-emerge chemical application. Henbit is another weed that does not tolerate high maintenance conditions.

Whiteclover (*Trifolium repens*)

Whiteclover is a perennial winter weed primarily. This plant tolerates heat better than most winter weeds, yet still dies back as summer temperatures become regular. Control is difficult with pre-emerges unless eradication with post-emerges is done. The plant is generally easily controlled with post-emerge chemical applications. Clover rarely inhabits closely mown turf or high-density turf.

Ryegrass (*Lolium perenne*) (*Lolium multiflorum*)

Ryegrass is generally not a problem weed unless out of place, such as un-overseeded areas. This grass is considered a turfgrass but also a weed when it has escaped from its area of use. This is a winter perennial (*Lolium perenne*) or an annual (*Lolium multiflorum*) exhibiting vigorous tillering growth habit and an extensive root zone. The perennial form is difficult to control both pre and post-emerge. The annual form is easy to control. Both die back as summer temperatures approach, with perennial returning each fall and winter.

CHEMICAL WEED TREATMENT METHODS:

These methods should be used only if all other tactics listed above have been employed.

WEED	METHOD	CHEMICAL
Crabgrass	Pre-emerge	Team, Barricade
	Post-emerge/Spot spray	MSMA
Goosegrass	Pre-emerge	Team, Barricade
	Post-emerge/Spot spray	MSMA
Dallisgrass	Pre-emerge	Team/Barricade
	Post-emerge/Spot spray	MSMA
Nutsedge	Pre-emerge	Team/Barricade
	Post-emerge/Spot spray	Manage
Dandelion	Pre-emerge	Team/Barricade
	Post-emerge/Spot Spray	MSMA
Curly dock	Post-emerge/Spot spray	Confront
Shepards purse	Pre-emerge	Barricade
	Post-emerge/Spot spray	Confront
Chickweed	Pre-emerge	Barricade
	Post-emerge/Spot spray	MSMA
Henbit	Pre-emerge/Spot spray	Barricade
Perennial Ryegrass	Pre-emerge	Barricade/Team
Annual Ryegrass	Pre-emerge	Barricade/Team

HERBICIDES:

TRADE NAME	COMMON NAME	TYPE	FORMULATION	COMMENTS/RESTRICTIONS
Team	Benefin Trifluralin	Pre-Emerge	G	Selective/Weed Control
MSMA	MSMA	Post-Emerge	EC, WSL	Selective/Grass Control
Confront	Triclopyr/Clopyralid	Post-Emerge	EC	Selective/Broadleaf Control
Roundup	Glyphosate	Post-Emerge	EC, WSL	Selective/Non Selective
Barricade	Prodiamine	Pre-Emerge	G, WP	Selective
Manage	Halosulfuron-Methyl	Post Emerge	WP	Sedge Control

EC - Emulsifiable Concentrate
WP - Water Dispersible Granule

F - Flowable

P - Powder

G - Granular

DISEASES

Most of the following diseases can be controlled through cultural practices, which include the selection of disease resistant plants and the use of slow release fertilizers to foster the growth of strong roots and stems. As moisture plays a major role in most disease development, good drainage is important in preventing the diseases from occurring. Pruning nearby foliage will improve air circulation and decrease shade, which in turn will speed up the evaporation process.

Dollarspot (*Sclerotinia homeocarpa*)

Dollarspot is a fungus found throughout the United States, and annually requires more fungicide expense than any other disease. Dollarspot affects most turfgrass species, and is generally characterized by round, bleached-out spots ranging from the size of a quarter to a silver dollar. These spots can eventually coalesce and destroy turf in large undefined areas. Occurrence of the disease is typically between temperatures of 60 and 90 degrees F. As is the case with most Fungi, high humidity further increases chances of infection. Dollarspot may be controlled easily by maintaining a preventative program, or immediate control application following early disease detection.

Brown Patch (*Rhizoctonia solani*)

Brown patch is the most widespread of all turfgrass diseases, affecting all major turfgrasses species. Brown patch is a soil inhibitor, thus making control more difficult. Occurrence is in circular patches from a few inches up to several feet in diameter. Brown patch infected leaves become soft, brown and finally die. A smoke ring at the margin of the infection is a distinguishing characteristic. Early chemical application will prevent excessive damage, but if the disease is allowed to persist extensive damage will result. The disease becomes active as soil temperatures near 60 degrees F., the temperature at which sclerotic will begin to germinate. Most problems occur when daily temperatures rise into the 80's with night temperatures in the 70's and high humidity. This disease is considered weak due to its slow growth and relatively narrow infection range. Control sometimes may be difficult due to its soil borne nature.

Powdery Mildew *Erysiphe graminis*

Powdery mildew infects warm and cool season grasses. It is also a major problem to several ornamental shrubs. This disease takes advantage of less than optimal conditions. Incidence is generally non-existent unless environmental stresses are initiated such as shading or over saturation. Lack of sunlight appears to be a major factor. Symptoms appear as a grayish white cast over the leaf surface with initial symptoms being small white cotton balls spread over the leaf surface. As the disease progresses, leaves turn yellow, wither and eventually die. The disease occurs in the spring and summer. Cultural practices such as increased sun exposure are effective. Chemical control of this disease is erratic.

DISEASE TOLERANCE LEVELS:

Turf grasses have low tolerance levels to disease owing to the difficulty of environmental stresses from April through October. Tolerance levels for each disease of concern on Turfgrasses are listed below. Summer season is mid-April to mid-October; winter season is mid-October to mid-April.

Disease	Season	Method	Tolerance Level/Turf Area
Dollarspot	Summer	Preventative	0
	Winter	Curative	1/100 sq. ft.
Brown Patch	Summer	Preventative	0
	Winter	Curative	1/100 sq. ft.
Powdery Mildew	Summer	Curative	1/100 sq. ft.
	Winter	No problem	0

FUNGICIDES:

TRADE NAME	COMMON NAME	TYPE	FORMULATION	DISEASE TREATED	COMMENTS/ RESTRICTIONS
Banner	Propiconazole	Systemic	EC	Dollar Spot, Brown Patch, Powdery Mildew	Broad Spectrum Residual

EC – Emulsifiable Concentrate
WP – Water Dispersible Granule

F – Flowable

P – Powder

G – Granular

ENVIRONMENTAL PROGRAMS

SOIL TESTING

Soil testing is currently accomplished through the Texas A & M University Lab and is recommended.

WATER QUALITY MONITORING

Stratus Properties actively participates in extensive water quality monitoring programs. Stratus Properties reports to the U.S. Fish and Wildlife service on a quarterly basis regarding water quality monitoring activities. In addition Stratus continuously monitors the water quality in Barton Creek proper, to assure that operations and activities within the project area are having no detrimental effect on water quality

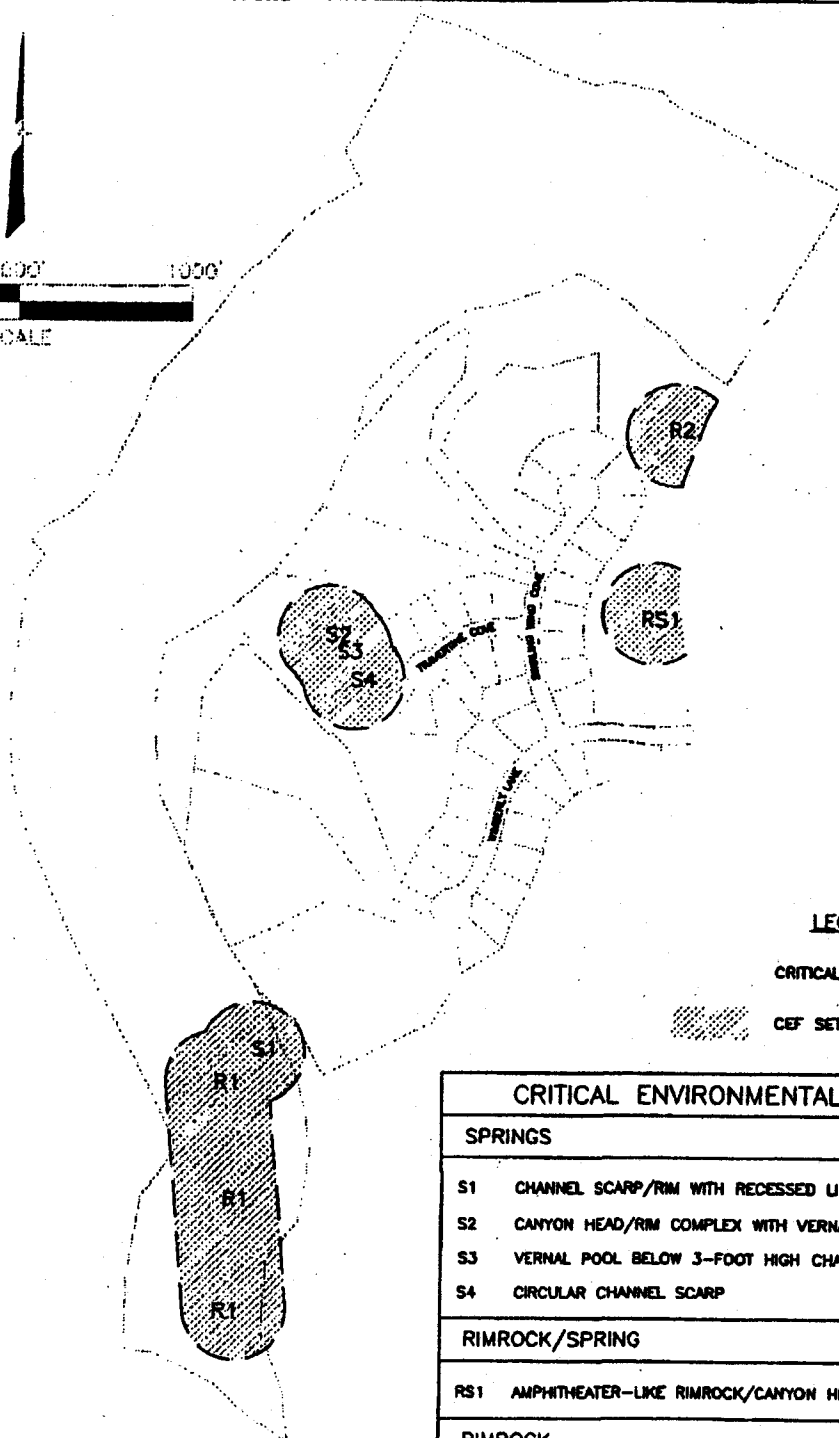
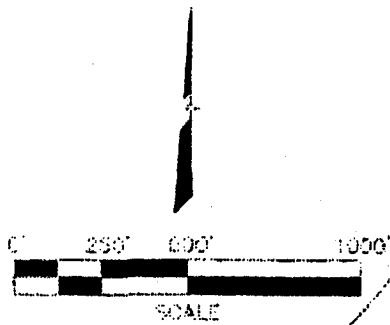
HILL COUNTRY ALMANAC

In a master-planned community, protecting the environment requires comprehensive involvement from both the homeowner and landowner. At Barton Creek, residents are encouraged to engage in sound practices, which minimize potential negative environmental and ecological impact. This includes assistance in choosing environmentally sensitive products and a recycling program. Barton Creek publishes the Hill Country Almanac, by James Turner, a multiple and national award winning guideline to living in the Texas Hill Country which offers natural solutions on a variety of landscaping subjects and practices.

RECORD KEEPING/ENVIRONMENTAL MONITORING

A major component of a strong IPM program is tracking environmental conditions and referencing for future control predictions. Historically pest problems occur at very similar times from year to year. Pest infestations can be predicted with relative accuracy when certain environmental conditions arise. Conditions monitored

and or recorded include soil temperature, air temperature, rainfall, humidity, day length, wind speed, sustained daily highs and lows, areas of consistent early infestation areas where control is effective or ineffective, irrigation and any other information further enabling pest prediction. Record keeping and monitoring gives us a basis for pest control be it mechanical, cultural, biological or chemical



LEGEND

CRITICAL WATER QUALITY ZONE

CEF SETBACK

CRITICAL ENVIRONMENTAL FEATURES

SPRINGS

- S1 CHANNEL SCARP/RIM WITH RECESSED LIP
- S2 CANYON HEAD/RIM COMPLEX WITH VERNAL POOL
- S3 VERNAL POOL BELOW 3-FOOT HIGH CHANNEL SCARP
- S4 CIRCULAR CHANNEL SCARP

RIMROCK/SPRING

- RS1 AMPHITHEATER-LIKE RIMROCK/CANYON HEAD

RIMROCK

- R1 RIMROCK BORDERING UPPER SLOPE BREAK ABOVE BARTON CREEK
- R2 RIMROCK ALONG WEST SIDE OF CHANNEL

EARTH TECH



Environmental Engineering & Construction

811 Barton Springs Rd. Ste. 400 • Austin, Tx. 78704 • (512) 474-5508

BARTON CREEK ABC WEST, PHASE II CRITICAL ENVIRONMENTAL FEATURES

ATTACHMENT A

L:\WORK\WATER\51330\10007\CAD\ABCW2-YA.dwg 05/03/2002 07:17:00 AM CDT

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Apr 15 03:55 PM 2004070708

HAYWOODK \$52.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

DOC. NO.

92055209

FILM CODE

00004838127

1400
BR
11.00 INDX
1 1 06/12/92

ASSIGNMENT OF DECLARANT'S RIGHTS

3:18 PM 1988

THIS ASSIGNMENT is made and entered into this 11th day of June, 1992, by and between FREEPORT-McMoRAN INC., a Delaware corporation (hereinafter referred to as "Assignor"), and FM PROPERTIES OPERATING CO., a Delaware general partnership (hereinafter referred to as "Assignee").

WITNESSETH

3:18 PM 1988

3.00 RECM
1 1 06/12/92
920552.09-DOC#
124.16-CHK#

WHEREAS, BARTON CREEK PROPERTIES INC., a Delaware corporation ("BCPI"), as Declarant, executed that certain Master Declaration of Covenants, Conditions, and Restrictions dated November 28, 1990, recorded in Volume 11324, Page 707, of the Real Property Records of Travis County, Texas (the "Restrictions"); and

WHEREAS, BCPI was merged with and into FMI Credit Corporation, a Delaware corporation ("FMICC"), and FMICC was thereafter merged with and into Assignor; and

WHEREAS, Assignor desires to transfer and assign to Assignee all of Declarant's rights, title, and interest into and under the Restrictions.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Transfer and Assignment by Assignor. Assignor shall and does hereby grant, sell, set over, transfer and assign to Assignee, its successors and assigns, all of Assignor's right, title, interest, powers, privileges and benefits in and under the Restrictions, including without limitation, any options and rights of first-refusal granted to or reserved by Declarant under the Restrictions.
2. Acceptance of Assignment. Assignee hereby accepts this Assignment.
3. Impact on Restrictions. Pursuant hereto, Assignee is hereby designated to be the Declarant under the Restrictions for all purposes from and after the date hereof. Assignee shall hereinafter have all rights to act as the Declarant under the Restrictions and to exercise all rights, powers and privileges as the Declarant under the Restrictions.
4. Survival of Provisions. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

5. Captions. The captions of sections in this Assignment are for convenient reference only and are not to be construed in any way as part of this Assignment.

[the remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers on the date first written above.

ASSIGNOR:

FREEPORT-McMoRAN INC., a Delaware corporation

By: E.E.
Name: E.E. Howard, III
Title: Vice President

ASSIGNEE:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: FREEPORT-McMoRAN INC., its
Managing General Partner

By: E.E.
Name: E.E. Howard, III
Title: Vice President

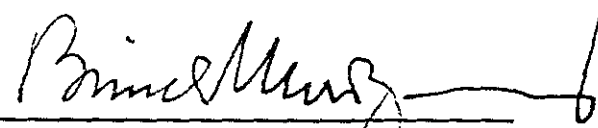
Return Address:

Nick van Kreisler
Baker & Botts
98 San Jacinto
Suite 1600
Austin, TX 78701

L0599/WP56/01GB03

STATE OF LOUISIANA
PARISH OF ORLEANS


On this 11th day of June 1992, before me appeared E.E. Howard, III,
to me personally known, who, being by me duly sworn did say that he is the
Vice President of FREEPORT-McMORAN INC., a Delaware corporation, and that
the seal affixed to said instrument is the corporate seal of said corporation and that said
instrument was signed and sealed in behalf of said corporation by authority of its board
of directors and said E.E. Howard, III acknowledged said instrument to be the free
act and deed of said corporation.


Notary Public, State of Louisiana
BRAINERD S. MONTGOMERY
Embossed hereon is my Orleans Parish,
State of La. Notary Public Seal.
(Typed or Printed Name of Notary)

NOTARY SEAL

STATE OF LOUISIANA
PARISH OF ORLEANS

On this 11th day of June 1992, before me appeared E.E. Howard, III,
to me personally known, who, being by me duly sworn did say that he is the
Vice President of FREEPORT-McMORAN INC., a Delaware corporation,
Managing General Partner of FM PROPERTIES OPERATING CO., a Delaware
general partnership, and that the seal affixed to said instrument is the corporate seal of
said corporation and that said instrument was signed and sealed in behalf of said
corporation by authority of its board of directors and was signed in behalf of said general
partnership, and said E.E. Howard, III acknowledged said
instrument to be the free act and deed of said corporation and said partnership.


Notary Public, State of Louisiana
BRAINERD S. MONTGOMERY
Embossed hereon is my Orleans Parish,
State of La. Notary Public Seal.
(Typed or Printed Name of Notary)
REAL PROPERTY RECORDS
TRAVIS COUNTY TEXAS

NOTARY SEAL

FILED

JUN 12 2 55 PM '92

DANA DEBEAUVOIR
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 hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

JUN 12 1992



Dana Debeauvoir

COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11706 0730



OTHER 2004212830

27 PGS

21



AFTER RECORDING RETURN TO:

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

BARTON CREEK WIMBERLY LANE PHASE II DESIGN GUIDELINES Single-Family Residential

Adopted:

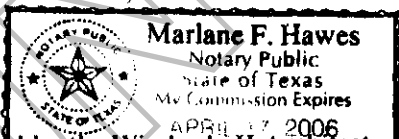
WIMBERLY II ARCHITECTURAL CONTROL
COMMITTEE

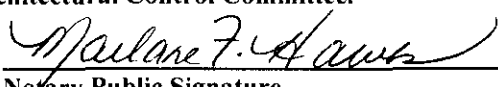
By: 

John E. Baker, Member

Travis County, Texas

This instrument was acknowledged before me on this 10th day of November, 2004,
by John E. Baker, Member of the Wimberly II Architectural Control Committee.




Notary Public Signature

Adopted by the Wimberly II Architectural Control Committee, in accordance with Section 5.02(c) of the Barton Creek North [Barton Creek ABC West Phase II] Development Area Declaration (the "Development Area Declaration") recorded as Document No. 2004070709, Official Public Records of Travis County, Texas.

In accordance with Section 5.02(c) of the Development Area Declaration, these Design Guidelines may be amended from time to time by the Wimberly II Architectural Control Committee. These Design Guidelines apply to all lots located in BARTON CREEK ABC WEST PHASE II, a subdivision located in Travis County, Texas, according to the map or plat recorded as Document No. 200400122, Official Public Records of Travis County, Texas.

Version 1.00

188652-6 11/08/2004

Introduction

Any notice required to be submitted to the Wimberly II Architectural Control Committee under these Design Guidelines or any information required to be submitted to the Wimberly II Architectural Control Committee hereunder will be submitted to the committee c/o Southwest Property Services, L.L.C., 7500 Rialto Blvd. Suite 120, Austin, TX 78735, Ph: 479.3434, Fax: 479.3435.

Background

Barton Creek is a master planned community located in Travis County, Texas. The community consists of Development Areas which are subject to the terms and provisions of the Master Declaration of Covenants, Conditions, Restrictions and Easements, recorded in Volume 11324, Page 707, Official Public Records of Travis County, Texas ("Master Declaration"), and a Development Area Declaration for each particular Development Area (the "Development Area Declaration"). The Master Declaration and each Development Area Declaration includes provisions governing the construction of improvements and standards of maintenance, use and conduct for the preservation of the Barton Creek community.

Architectural Control Committee and Review Authority

On February 25, 2002, Stratus Properties Operating Co. ("Stratus"), as Declarant under the Master Declaration, caused to be recorded that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded as Document No. 2002044488, in the Official Public Records of Travis County, Texas (the "Partial Assignment"). Pursuant to the Partial Assignment, Stratus reserved its rights to act as Declarant under the terms and provisions of the Development Area Declaration applicable to Wimberly Lane Phase II and to establish an architectural control committee to review and approve plans and specifications for improvements within the Wimberly Lane Phase II community. While a master architectural control committee has been established under the Master Declaration, the master architectural control committee has no authority to review, approve, or disapprove any Improvement constructed within the Wimberly Lane Phase II community. Stratus has also retained the right to appoint and remove all members of the Wimberly II Architectural Control Committee (the "Committee"). The right of Stratus to appoint and remove all members of the Committee will terminate when Stratus has assigned such rights to the master architectural control committee established under the Master Declaration.

Article V of the Development Area Declaration for Wimberly Lane Phase II includes procedures and criteria for the construction of improvements within the Wimberly Lane Phase II community. Section 5.01 of the Development Area Declaration provides that no improvement may be erected, placed, constructed, painted, altered, modified or remodeled without the prior written approval of the Committee.

The Committee consists of three (3) members who have been appointed by Stratus (the "Declarant"). As provided in Article V of the Development Area Declaration, Declarant has a substantial interest in ensuring that improvements within the Wimberly Lane Phase II development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the community, and as a consequence thereof the Committee acts solely in Declarant's interest and shall owe no duty to any other owner, the Wimberly II Community, Inc., or the Barton Creek North Property Owners Association, Inc.

Governmental Requirements

To the extent that any local government ordinance, building code or regulation imposes a more restrictive standard than the standards set forth in the Development Area Declaration or these Design Guidelines, the local government standard shall control. To the extent that any local government standard is less restrictive, the Development Area Declaration and these Design Guidelines (in that order) shall control. Plans submitted to the Committee must comply with all applicable building codes, zoning regulations, if any, and the requirements of all agencies and municipalities having jurisdiction over the Wimberly II community.

The Committee shall bear no responsibility for ensuring plans submitted to the Committee comply with any applicable building codes, zoning regulation and other government requirements. It is the responsibility of each owner to obtain all necessary permits and inspections. Regulatory approvals do not substitute for review and approval hereunder, and vice versa.

Interpretation

In the event of any conflict between these Design Guidelines and the Development Area Declaration, the Development Area Declaration shall control. Capitalized terms used in these Design Guidelines and not otherwise defined in this document shall have the same meaning as set forth in the Development Area Declaration.

Amendments

The Committee may amend these Design Guidelines. All amendments shall become effective upon recordation in the Official Public Records of Travis County, Texas. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or in progress. It is the responsibility of each owner to ensure that they have the most current edition of the Design Guidelines and every amendment thereto.

Architectural Review Process

Objective

The objective of the review process is to promote aesthetic harmony in the community by providing for compatibility of specific designs with surrounding buildings, the environment and the topography. The review process strives to maintain objectivity and sensitivity to the individual aspects of design.

Submittals

Requests for approval of proposed construction, landscaping, or exterior modifications must be made by submitting an application in the form attached hereto as Attachment 1.

Timing

The timing of review of applications and submittals and the duration of each approval shall be in accordance with Article V of the Development Area Declaration and Attachment 1.

Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Committee as a condition of approval.

Inspection

Upon completion of all approved work, the owner must notify the Committee. The Committee may inspect the work at any time to verify conformance with the approved submittals.

Architectural and Aesthetic Standards

Styles

Architectural styles may vary, but must be regionally appropriate for Central Texas and compatible with surrounding properties. Certain home styles are prohibited, including but not limited to, Georgian, Colonial, Cape Cod, and Tudor. In the event of any dispute as to whether a particular style submitted for approval includes any of the foregoing prohibited elements, the opinion of the Committee will be final.

Repetition of Plans and Elevations

Notwithstanding any provision in these Design Guidelines to the contrary, if an elevation and/or floor plan is approved for construction on a particular lot, a substantially similar elevation and/or floor plan will not be approved for construction on any other lot unless an interval exists between the substantially similar

elevations and/or floor plans. A three (3) lot interval will apply to the Lots on the same side of the street as the affected lot AND a five (5) lot interval will apply to Lots across the street from the affected lot. For example, in a series of seven (7) lots on the same side of a street which for the purpose of this paragraph are designated as Lots 1 through 7, and where the affected Lot is the fourth lot in the series, then substantially similar plans will not be permitted for Lots 1, 2, 3, 5, 6 or 7. As a further example, if the lot designated as lot 4 in the previous sentence is across the street from a lot designated as lot 10 in a series of five (5) lots numbered 8 through 12 then substantially similar plans will not be permitted for lots 8 through 12. Notwithstanding any provision in this paragraph to the contrary, the Committee will have the express authority to interpret the application of this provision. In the event this provision cannot be applied as a result of the configuration of any given series of lots, then the Committee will be permitted to impress alternate requirements so long as such requirements are consistent with the purpose intended by this paragraph.

Lots 1-10, 14-26, 28-32, 36-41

At least eight (8) different home plans must be available for the construction of residences on Lots 1-10, 14-26, 27-32, 36-41. Each plan must include a minimum of three (3) different elevations and each elevation must vary significantly from one another, as determined by the Committee in its reasonable discretion. Variation can be achieved by incorporating different materials, rooflines, architectural details and fenestration.

The same or similar elevations may not be repeated more than seven (7) times within the Wimberly II community. Insignificant variations among elevations, as determined by the Committee in its reasonable discretion, will be considered the same plan.

Lots 11-13 and 33-35

The elevation and floor plans for any home approved for Lots 11-13 and 33-35 may not be the same or substantially similar, as determined by the Committee in its reasonable discretion, to any other elevation or floor plan approved or constructed within the Wimberly II community.

Prohibited Elements. The following architectural features or elements are prohibited unless advance written approval is obtained from the Committee:

Roofs

- Excessively pitched roofs.
- Mansard, gambrel or chalet roofs.
- Flat roofs and roofs that appear flat.
- Roofs that are too steep or too shallow for the style of the home.
- Shed roofs except as incidental to the main roof.

Design Elements

- Enormous entries and front door assemblies, such as triumphant arches.
- Over-scaled doors.
- Excessively over-scaled arch openings, or the use of arched openings as the primary design characteristic of the home.
- Stovepipe chimneys and metal chimney caps.
- Random roof penetrations, vents or skylights facing any street.
- White or bubble skylights.
- Mirrored glass or glass block.
- Columns that are not in scale with other elements of the residence.
- Expanses of unbroken masonry equal to or exceeding 24' in length.

Materials and Colors

- Red or very dark brick, Masonite or other synthetic wall materials, including EIFS stucco.
- Stone which appears glued on.
- Wood siding.
- Vivid, inappropriate colors.

- Large areas of white surface such as white or very light stucco.

The foregoing list is not intended to be exclusive, and the Committee reserves the right to disapprove plans and specifications which include additional elements other than those listed above.

Encouraged Elements

The following architectural features are generally appropriate to the Wimberly II community; provided, however, that all such architectural features must be approved in advance by the Committee:

- Arcades, colonnades, loggias, and covered passages between structures.
- Outdoor spaces that extend living functions seasonally, including front porches of sufficient depth to permit furniture and seating.
- Semi-enclosed courtyards.
- Designs that save as many large caliper trees as possible.
- Semi-circular arched openings used discretely.
- Hip roofs, pitched 6 in 12 to 9 in 12.
- Non-reflective standing seam metal or tile roofs in muted colors.
- Roof overhangs of 18" or wider measured from exterior cladding.

Minimum Square Footage

With the exception of Lots 11-13 and 33-35, the minimum heated/air conditioned square footage of any single residence is 2,500 square feet. The minimum allowable heated/cooled square footage for Lots 11-13 and 33-35 is 3,500 square feet.

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

For the purpose of calculating total square footage, open or screened porches, terraces, patios, decks, driveways, garages, storage facilities and walkways shall be excluded. Other detached accessory uses such as cabanas or garages are permitted, but will not count toward the minimum square footage requirement.

In order to determine compliance with square footage requirements, plans submitted for review shall clearly indicate:

- the heated/air conditioned space of each floor.
- the total heated/air conditioned space of the residence.
- the non-heated/air conditioned space of each floor.
- the total non-heated/air conditioned space of the residence.

Accessory Buildings

Accessory buildings, including pool cabanas, detached garages and guesthouses, shall be constructed of the same materials and with the same quality of construction as the primary residential structure.

Prior to the start of construction of accessory buildings, plans must be submitted to the Committee for review.

Height and Massing

In no case shall the height of any portion of any structure exceed thirty-eight feet (38') above natural grade, 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 eave on any structure shall not exceed thirty-five feet (35') above the natural grade at any point on the exterior wall of the residence.

Designs are encouraged that break down the mass and/or undulate the homes. Many uses can be placed in accessory structures: garages, workshops, offices, cabanas, and recreational uses.

Site Design

Setbacks

With the exception of corner lots (Lots 20, 22, 32 and 48), no building or other Improvement may be located nearer than twenty feet (20') from the front Lot line, nearer than five feet (5') from any side Lot line, or nearer than fifteen feet (15') from any rear Lot line without the express prior written approval of the Committee. In addition to the individual five foot (5') side Lot line setbacks, the two (2) side yard setbacks for each Lot will in no event be less than fifteen feet (15'). For each corner Lot, the front yard setback of twenty feet (20') shall apply to the street adjacent and parallel to the front door of the residence constructed on the Lot, and a fifteen foot (15') setback shall apply to the other street. For the purpose of determining setbacks, eaves and steps shall not be considered as part of the building, provided, however, that no portion of any Improvement shall encroach upon another Lot or property.

Wastewater Service Installation and Connections

Wimberly Lane Phase II is served by a combination of gravity and pressure wastewater collection systems.

Lots 1-8, 15-24, 30-32, and 45-48 are intended for gravity collection. Refer to Attachment 2 for minimum finished floor elevations necessary to accommodate gravity service for Lots 15-17, 30-32, and 45-48.

Lots 9-14, 25-26, 28-29, and 33-44 are intended for pressure service. The owners of these Lots are required by Travis County M.U.D. No. 3 to install single wastewater pump stations as manufactured by *e one* (model 2012) as set forth on Attachment 2.

Owners of Lots intended for gravity collection that install a foundation with a finished floor below those established for gravity service may utilize a wastewater pump station as provided on Attachment 2 or as otherwise approved by Travis County M.U.D. No. 3.

In all cases, pump station specifications may be varied only upon approval of Travis County M.U.D. No. 3 or its successor. Travis County M.U.D. No. 3 or its successor must have access to the wastewater pump stations for operation and maintenance purposes.

Driveways

One (1) driveway curb cut shall be permitted per residence, with the exception of Lots 20, 22, 32 and 48 which may have one (1) curb cut on each of the two streets fronting the Lot to allow circular drives. Single driveways shall be accessed from the street of lower classification (e.g. a cul-de-sac is the lowest classification street within the property.)

Driveways shall be a maximum of fifteen feet (15') and a minimum of twelve feet (12') wide at the street and constructed of concrete, masonry pavers or a combination of the two. Exposed aggregate concrete is permissible. The use of colored and/or textured concrete is discouraged and shall be permitted only if approved in advance by the Committee. Asphalt driveways shall not be permitted.

Driveways shall have a maximum five-foot (5') turnout radius at the street, and shall intersect the street at as close to 90 degrees as possible.

Driveways and parking courts shall in case be closer than five feet (5') from any Lot line. Long drives should undulate so as not to run parallel with the property line.

Where possible, driveways and sidewalks shall be flush with finish grade. In the event a culvert is necessary to convey water from one side of the drive to another, such culvert must be installed in accordance with City of Austin standards.

Sidewalks

Sidewalks from the street or driveway to the residence must be a minimum of forty two inches (42") wide and have the same or similar pattern and material as the driveway.

Garages

Each residence must be designed and sited on the Lot so as to minimize the impact of garages on the streetscape. Each Lot must contain a private garage for not fewer than two (2) automobiles. If more than three (3) garage bays are to be constructed, the massing shall be broken up by separating the large mass into smaller independent volumes. These smaller volumes may be used to enclose or define a motor court.

A maximum of two (2) single-vehicle garage doors constructed on a Lot may face a street provided the doors are:

- recessed at least ten (10') from the nearest elevation of the residence located on such Lot, or
- obscured by an arbor planted with evergreen vines, or a porte cochere which may not extend more than five feet (5') in front of any heated/air conditioned portion of the residence on such Lot.

Utility Connections and Trenches

Each site plan must indicate the location of utility trenches, connections and meters and must note any specific vegetation that will require additional protection from trenching equipment.

Whenever possible, a central service location not on the street facing elevation, accessible to the utility service provider, not visible from the street and screened from neighbors, shall be designed for each dwelling which shall contain connections for all utilities. Utility meters mounted on the home should be painted to match the exterior of the structure.

Air conditioning compressors shall be enclosed by a structural screening element and landscaped. Screens shall be a minimum of 48" above grade and a maximum of 60". Screening is to be located a minimum of 18" vertical distance from the unit, or as code requires (whichever is greater).

Satellite Dishes

Satellite dishes that do not exceed the dimensions of 18" in diameter or two feet (2') in height may be erected and maintained on the property, provided any such device must be screened so as not to be visible from other lots or streets. Devices that do not meet these requirements must be submitted to the Committee for comment.

Materials

Masonry

Stone, brick or stucco shall comprise 100 % of the exterior building material. The Committee encourages the restrained use of a variety of materials, which can add textural richness to the structure. No home shall be clad with 100% stucco or 100% brick.

The use of regionally native stone is encouraged, including beige limestone variously called Austin white, Fredricksburg cordova cream, or Florence stone and other compatible stones, such as tumbleweed sandstone. The mortar should match, rather than contrast, with the masonry.

Red, orange or reddish-toned, or very dark brick is not permitted. The use of beige brick native to the Hill Country is encouraged.

White stucco should be used only as an accent color; large expanses are prohibited. Red or reddish-toned stucco is not permitted.

Changes in materials at a vertical line shall occur only at interior corners.

No more than 12" at the bottom of the slab may be left exposed; the remainder must be covered with the same material as the exterior wall (a maximum 12" allowable exposed lug). The 12" maximum exposed foundation shall be underpinned. Plans shall indicate actual grade and show masonry treatment of slab.

Masonry samples shall be provided to the Committee for approval.

Windows and Doors

Combinations of double hung, casement, or fixed wood windows, wood entry doors, French doors, and patio doors are encouraged. Windows shall be wood, wood clad or high quality vinyl. Snap-in window grids are prohibited. Aluminum windows and doors are not allowed.

Raised panel hollow metal doors and garage doors are allowed when finished to match residence trim colors. The use of wood garage doors is encouraged.

Roofs and Chimneys

Roof material shall be non-reflective standing seam metal, terra cotta tiles, concrete tiles, slate or 30-year warranty (or greater) composition asphalt shingles. All roof materials shall be a muted earth tone color as approved by the Committee.

All chimneys shall be clad in masonry of the same type used on the exterior walls. Exposed metal chimney caps are prohibited.

Roof vents and other penetrations shall be as unobtrusive as possible.

Fencing and Walls

Walls and fences are permitted in rear and side yards, and may not encroach upon any utility, drainage or water quality easement.

All fencing which faces the street (as determined by the Committee) or which runs adjacent to the street on corner lots shall be wrought iron compatible with fencing typically found throughout the Barton Creek community. Wrought iron fencing shall be black or brown with no spikes above the top rail, 4' high minimum and 6' high maximum above natural grade. Chain link fencing, utility fencing, cyclone fencing and deer fencing are not permitted. The Committee reserves the right to require landscape screening along wrought iron fencing where required to preserve the privacy of adjacent homes or to protect the streetscape.

Interior side yard and rear yards may have wood fencing which is 6' high cedar pickets with vertical boards alternating on either side of horizontal stringers and a horizontal wood cap along the length of the fence.

Solid walls enclosing an entire site are not permitted. Walls shall be architecturally compatible with the residence, and shall not be excessive in height (as determined by the Committee). The design of stone walls must avoid long unbroken expanses of masonry and be modular or rhythmically punctuated with openings or pilasters. Detailed attention to cap material and stone is required.

Landscaping, Lighting And Irrigation

Maximum Landscape Area

In compliance with the City of Austin's Save Our Springs Ordinance, the maximum portion of any lot that may be turfed or landscaped is 15%. Landscape areas not covered with plant materials may be covered with mulch composed of organic materials. Mulch used as a predominant element in the landscape will not be accepted. The use of rock or crushed rock as a ground cover shall not be permitted.

Landscape plans must indicate the percent of the Lot intended to be planted with turf or landscaping.

Planting Guidelines

All plant material shall be native or adapted native species recommended by the City of Austin Grow Green Program. The recommended plant list is attached hereto as Attachment 3.

The following species are specifically prohibited:

Palm Trees (except Sable Palm)

English Ivy

Bradford Pear

Bamboo

St. Augustine turf

Bougainvillea

The Committee reserves the right to require removal of prohibited plants if installed on any Lot within Wimberly Lane Phase II community.

Plant material both inside and outside of enclosed areas should be deer resistant.

All turf in front yards shall be Tiff Bermuda. Back yard turf may be Bermuda or Zoysia. St. Augustine turf is expressly prohibited.

Prior to the occupancy of any home, sufficient landscaping or ground cover shall be installed to prevent erosion from the Lot.

Required Street Trees

Each Owner will be required to install trees along the street adjacent to the Lot ("Street Trees") in a location approved in advance by the Committee. A minimum of 8 caliper inches of Street Trees for each 50 linear feet of street frontage is required. Street Trees shall be planted a minimum of 5 feet and a maximum of 10 feet from the edge of the pavement and shall be a minimum of 2" caliper at the time of planting.

The following may be used for Street Trees (see plant list for species): Chinquapin Oak, Lacy Oak, Cedar Elm, and Texas Ash.

Each existing specimen tree of 3 caliper inches or greater may be counted toward the Street Tree requirement on a caliper inch basis provided the tree(s):

- shall remain after construction, and
- are located within 5' of the sidewalk (where sidewalks are required) or 10' of the pavement (where sidewalks are not required). In order to encourage a more natural look to the planting, the total required caliper inches must include a variety of sizes and plant materials.

Street Trees must be clustered in groupings, approved in advance by the Committee, rather than spaced at formal, equal intervals.

Landscape Plans

A landscape plan must be submitted prior to the installation of any landscaping or irrigation and in no case later than six (6) months from the commencement of construction of a residence on the Lot.

Landscape designs must contain a variety of native and adapted plant materials arranged in a manner consistent with the native Hill Country landscape. Informal, natural groupings are suitable; long linear hedges and large expanses of single plant species are not permissible.

Landscape plans must show the location of all proposed plant materials and include a plant legend comprised of plant species, quantities, and sizes at the time of planting.

Landscape designs shall anchor buildings and other vertical improvements with dense foundation plantings.

Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties, and to soften masonry screen walls of pool equipment and air conditioning condensers.

The Committee reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the residence and associated landscaping.

Required Notes

The following notes shall be placed on the Landscape Plan:

- I- All landscape areas not covered with plant materials shall be covered with mulch composed of organic materials.

- 2- All above ground utility connections shall be screened with landscaping so that they are not visible from the street or adjacent properties.
- 3- An automatic irrigation system with separate zones for turf and bedding areas shall be installed for all proposed landscape areas prior to planting. An automatic timer and rain/freeze sensor shall be provided.
- 4- Upon completion of the installation of landscaping, as approved on this plan, the Owner or representative shall contact the Wimberly II Architectural Control Committee for inspection.
- 5- Responsibility for proper site drainage rests with the Owner of the Lot.

Hardscape Elements in the Landscape

Hardscape elements must be in scale with the home and associated structures. All landscape sculptures, fountains and structures are subject to approval by the Committee.

Irrigation

An irrigation system with a rain/freeze sensor is required to provide irrigation for all residences. Plans for the required system must be submitted with the landscape plans.

Landscape Inspection

The Committee will, upon completion of the installation of landscaping, conduct an on-site inspection of the Lot to ensure compliance with the approved plan. Silt fences and construction fences must remain in place pending a site visit by representatives of the Committee and the landscape contractor or general contractor.

Drainage

Responsibility for proper site drainage rests with the Lot owner.

Exterior Lighting

All exterior lighting must be kept to a minimum, but consistent with good security practices. No exterior light whose direct source is visible from a street or neighboring property or which produces excessive glare to pedestrian or vehicular traffic will be allowed. Moonlighting down from trees is recommended, but shall be shielded to eliminate off-site glare and source visibility.

Use of other than white or color corrected high intensity lamps and exterior lights will not be allowed. Holiday lighting is an exception. Sodium, mercury vapor, or bare HID yard lights are not allowed.

Approval of the proposed illumination plan is required as part of the required landscape plan.

Maintenance

Each Lot owner is required to comply with the Integrated Pest Management Plan adopted for the Wimberly II community. A copy of the plan is attached to that certain Barton Creek ABC West Phase II Notice of Applicability, recorded as Document No. 2004070708, in the Official Public Records of Travis County, Texas.

Recreation Facilities

Pool Plans

Swimming pools shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the dwelling. Adequate screening, security, and maintenance shall be provided. Fencing and walls around the pool shall be permitted as described above and integrated into the design of the dwelling and site. Fences must meet all governmental regulations for safety.

Pool equipment must be screened within a fully enclosed structure.

The Committee reserves the right to require a cross section through the pool, should such detail aide in the review process for the facility.

Playscapes, Sport Courts

Playscapes are permissible at the sole discretion of the Committee. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties. Playscapes may not be lighted for use after dark.

Tennis courts and Sport Courts are not permitted.

Barbecue Grills

Freestanding barbecue grills are permitted only if they are stored and used in a location that is not visible from the street or any adjacent property. The use of built in grills is encouraged.

Construction Rules

The following construction rules apply to all construction activity within Wimberly Lane Phase II. Weekly inspections by a representative of the Committee may occur from time to time to insure compliance with these rules. A violation of these construction rules may result in a fine.

Erosion Control Installation and Maintenance

It is the responsibility of the Lot Owner to install erosion control measures prior to the start of construction and to maintain them throughout the entire construction process.

Prior to the commencement of any clearing, erosion control measures must be installed and inspected by a representative of the Committee. Please contact the Committee to request an erosion control inspection 48 hours prior to the inspection. The Committee is not responsible for inspections and reporting for NPDES. The responsibility for all EPA NPDES matters lies with the Lot Owner.

Each construction site shall have one designated construction entry that shall have a 10' long by 15' wide section of 3" to 5" diameter stone placed on the entry. The purpose of the stone is to clean the tires of vehicles exiting the site, in order to limit the amount of mud and sediment that is brought onto the street. The Owner should anticipate that heavy construction vehicles will crush and embed the stone during construction and that additional stone will be required in order to protect the integrity of the entry.

During construction, silt fencing which complies with City of Austin standards is required to be properly installed (inside the required buffers) and maintained to protect the low sides of all disturbed areas, where stormwater will flow during construction. The purpose of the silt fence is to capture the sediment from the runoff and to permit filtered, clean water to exit the site. A Lot Owner should anticipate that built-up sediment will need to be removed from the silt fence after heavy or successive rains, and that any breach in the fencing will need to be repaired or replaced immediately.

If for any reason the silt fence is to be temporarily removed, please contact the Committee prior to the removal.

Security

Neither the Committee, the Association, nor the Declarant is responsible for the security of job sites during construction. If theft or vandalism occurs, the Owner should first contact the Travis County Sheriff's Department and should then notify the Committee.

Chain Link Fence

A six-foot high temporary chain link fencing must be installed around the entire perimeter of construction and shall be maintained throughout construction. The purpose of the fence is to protect vegetation outside the limits of construction and to stop construction debris from blowing outside the construction site. Orange plastic fencing may be used to protect trees to be saved within the construction limits, but may not be used in lieu of chain link fence for the perimeter of the construction limits.

Although not required, the Owner may wish to consider adding a gate in the chain link fence across the driveway, in order to provide an extra measure of security for the construction site.

If for any reason the fence is to be temporarily removed, please contact the Committee prior to the removal.

Construction Hours

Unless prior approval has been obtained from the Committee, construction may take place only during the following hours: Monday through Friday from 7:30 a.m. until 6:00 p.m., and on Saturdays from 9:00 a.m. through 5:00 p.m. To request extended construction hours for special situations (such as large foundation pours) contact the Committee for advance approval.

There shall be no construction on Sundays or the following holidays: New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day.

Noise, Animals

The use of radios, tape and CD players must be restrained, so as not to be heard on an adjoining lot or street.

Contractors and subcontractors may not bring dogs to construction sites.

Material and Equipment Storage

A designated material storage area shall be indicated on the Final Plans. All construction materials and equipment shall be neatly stacked, properly covered and secured. Any storage of materials or equipment shall be the Owner's responsibility and at their risk.

No Owner or such Owner's contractors or representatives may disturb, damage or trespass on other Lots within the subdivision.

Site Cleanliness

Each Lot Owner must insure that a container for debris is provided during construction and each owner will be responsible for cleaning up all trash and debris on the construction site on a daily basis. Dust control shall be the responsibility of the Owner which may include the installation of vegetation or the application of water to disturbed areas.

Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site.

The dumping, burying or burning of trash is not permitted anywhere in Wimberly Lane Phase II.

When moving heavy equipment precautions must be taken to prevent damage to pavement, curbs and vegetation. Any damage to such structures will be assessed against the Lot Owner. Crawler tractors are not to be operated on paved or concrete surfaces.

Mud, dirt and other construction debris that is tracked off site shall be cleaned by the Lot Owner on a daily basis.

Sanitary Facilities

A Lot Owner must insure that temporary sanitary facilities (chemical toilets) are available on such owner's Lot during construction. The Committee will be permitted to designate the location of all sanitary facilities.

Construction Parking

While on-street parking is permitted, no vehicle will be permitted to block ingress and egress over and across any street within the subdivision. Vehicles in violation of this restriction are subject to towing.

Construction crews shall not park on, or otherwise use, other Lots.

Construction crews should not park under the crown of existing trees, as this causes compaction of soils and damage to the critical root zone, leading to the death of the trees.

Schedule of Fines

The schedule of fines listed below may be assessed by the Committee for violation of these construction rules or the Design Guidelines. The Committee or the Wimberly II Community, Inc. will comply with any applicable notice and/or hearing requirements pursuant to Chapter 209 of the Texas Property Code, known as the Texas Residential Property Owners Protection Act, prior to the levy of any fine hereunder.

Schedule of Fines

Premature Clearing ¹	\$500
Construction without Committee approval	\$500
Inadequate Construction Entry	\$250
Inadequate/Removed Silt Fence	\$250
Inadequate/Removed Construction Fence	\$250
Excessive mud/debris on street	\$250 plus \$50/day
Excessive construction debris	\$250 plus \$50/day
No dumpster provided	\$150 plus \$50/day
No chemical toilet provided	\$150 plus \$25/day
Encroachment on buffers	\$500 plus tree replacement
Encroachment on adjacent properties	\$500 plus cost of repair
Damage to streets, curbs, infrastructure	\$500 minimum
Miscellaneous violation of construction rules	To be determined
Parking off the asphalt	\$250.00

PLAN SUBMITTALS

New residential home construction within Wimberly Lane Phase II will utilize a two-stage review process.

SUBMITTAL PROCESS FOR LOTS 1-10, 14-26, 28-32, 36-41:

PLAN BOOK AND MATERIAL REVIEW

Prior to the start of construction of any home in Wimberly Lane Phase II, the owner will submit for approval plans for at least eight (8) home designs to be offered in the neighborhood including three (3) required front elevation variations for each plan.

The Plan Book and Material Review will require the submission of the following information:

- Floorplans
- Elevations of all sides of each home indicating
 - Roof pitch
 - Roof peak height above the foundation
 - Exterior materials- walls, roof, chimney
 - Window specifications
 - Chimney cap materials/design
 - Heated/air conditioned square footage of each floor and the total heated/air conditioned square footage
 - Non-heated/air conditioned spaces of each floor and the total non-heated/air conditioned space of the residence
- A Material Sample Board for the neighborhood including stone samples (colors and patterns), mortar colors, stucco colors, trim colors, roof materials and colors, and window materials and colors. Each sample shall be appropriately labeled with name and/or style number so that the sample board can be referenced for all homes.

FINAL PLAN REVIEW

A completed Final Plan Review Application, see Attachment 1, must be submitted to the Committee. The application must include an Application Fee in the amount of \$300.00, a Compliance Deposit in the amount of \$2,000.00. The Final Plan Application must also include all information required to be submitted as set forth on the application.

SUBMITTAL PROCESS FOR LOTS 11-13 and 33-35:

PRE-DESIGN MEETING

A pre-design meeting is the required first step in the design process. The meeting should include the Owner, members or representatives of the Committee, and, if applicable, the Owner's architect and/or builder.

Committee members or representatives will be available to review the approval and construction process and to potentially identify concerns or issues that could save the Owner both time and expense during design of the home.

Informal discussions may include tentative house location, style, size and materials. If available, the Owner should bring any preliminary plans, photos or design concepts.

PRELIMINARY PLAN REVIEW

Preliminary plan review is a required step in the design process. The submittal shall include the following information:

Application Fee in the amount of \$300.00

The Preliminary Plan Review will require the submission of the following:

Preliminary Site Plan

- North arrow
- Property lines
- Easements
- Setbacks
- Tree survey of all area to be disturbed indicating size and species of all trees 6" in diameter or larger
- Topography
- View corridors
- Rock outcroppings
- Proposed building footprint and finished floor elevation
- Proposed driveway location
- Tentative locations of accessory site development (such as pools, cabanas)

Preliminary House Plans

- Schematic floor plans
- Schematic elevations including roof pitch and materials
- Square footages- heated/air conditioned and non-heated/air conditioned for each floor

FINAL PLAN REVIEW

A completed Final Plan Review Application, see Attachment 1, must be submitted to the Committee. The application must include an Application Fee in the amount of \$300.00, a Compliance Deposit in the amount of \$2,000.00. The Final Plan Application must also include all information required to be submitted as set forth on the application.

LANDSCAPE PLAN REVIEW (ALL LOTS)

Prior to the installation of any landscaping on any lot a Landscape Plan must be submitted to the Committee. The Landscape Plan must include the following:

- Property Lines with dimensions
- Utility boxes and screening
- Existing contours
- Trees to remain
- Trees to be removed
- Required street trees
- Drives, parking areas and walks
- House and accessory structures
- Easements
- Boundaries of turf areas with type of turf noted
- Locations of all proposed plants
- Plan legend including species, quantity and sizes at time of planting
- Fence location and materials
- Proposed landscape lighting
- Required notes (see above)
-

Attachments:

- 1 Plan Submittal Application**
- 2. Wastewater Service Installations and Connections**
- 3. City of Austin Grow Green Plant List**

UNOFFICIAL

ATTACHMENT I
FINAL PLAN REVIEW APPLICATION

Deliver to:

Wimberly Lane Phase II Architectural Committee

c/o Southwest Property Services, L.L.C.

7500 Rialto Boulevard, Suite 1.120

Austin, Texas 78735

(o) 512.479.3434

(f) 512.479.3435

Wimberly Lane Phase II

Final Plan Review Application

Submittal Date _____

Legal Description _____

Block _____ Lot _____

Street Address _____

Homeowner (if custom home) _____

Homebuilder _____

Architect (if applicable) _____

(Lots 1-10, 14-26, 28-32 and 36-41 only)

Name/number of previously approved home plans _____

Proposed Elevation _____

Are there any modifications to the previously approved plan that would affect the exterior elevations or square footage of the home? If so, please describe below and attach a set revised home plans including all elevations and floor plans.

Applicant's Signature _____

I _____ do _____ do not wish to attend the ACC meeting for review of the attached plans.

Notes:

1. Complete plans and applications received by noon Thursday will be placed on the following Thursday's agenda.
2. Plans will not be reviewed without the required application fee.
3. Incomplete applications and plans will be returned for completion prior to inclusion on an ACC agenda. Please fully complete this application prior to submittal to ensure your plans and application are complete.

Wimberly Lane Phase II

Final Plan Review Application, Page Two

Application Fee and Compliance Deposit

Check for Application Fee in the amount of \$300.00 payable to Southwest Property Services.

Check for Compliance Deposit in the amount of \$2,000.00 payable to Southwest Property Services.

Site Plan (2 copies for ACC, plus 3 copies for M.U.D.)

Please indicate whether plans include the following:

- ☐ 1"= 20' or larger scale, as appropriate to the acreage
- ☐ Site dimensions
- ☐ Existing Contours
- ☐ Property lines
- ☐ Chemical toilet location
- ☐ Silt fence location
- ☐ Chain link fence location at limits of construction
- ☐ Construction entry with dimensions of entry and size of stone
- ☐ Dumpster location
- ☐ Materials storage location(s)
- ☐ Existing sidewalk along the street (if applicable)
- ☐ Building setbacks
- ☐ Building location labeled with floorplan reference and noting any proposed revisions to previously approved plans
- ☐ Proposed finished floor elevation
- ☐ Easements
- ☐ Utility connections at the street and residence with proposed trench locations
- ☐ Trees to be removed
- ☐ Trees to remain
- ☐ North arrow
- ☐ Driveway and sidewalk locations and materials
- ☐ Proposed perimeter fence locations including material and height
- ☐ Any anticipated accessory development such as pools, cabanas, guest house

Floor Area Ratio:

(Per the Design Guidelines, the total square footage of the second floor of any residence shall not exceed 100% of the heated/air conditioned space on the first floor.)

_____	Heated/Air Conditioned area of first floor
_____	Attached Non heated/air conditioned area of first floor
_____	Total 1st floor area
_____	Heated/Air Conditioned area of second floor
_____	Attached Non heated/air conditioned area of second floor
_____	Total 2nd floor area
_____	Total Heated/Air Conditioned area all levels
_____	Total Attached Non Heated/Air Conditioned area all levels
_____	Total floor area (all levels)

MINIMUM FINISHED FLOOR ELEVATION FOR GRAVITY WASTEWATER SERVICE

LOT No.	MINIMUM FINISHED FLOOR ELEVATION	WW SVC ELEV. @ PROP. LINE
15	784.2	780.3
16	784.2	780.3
17	784.6	780.3
30	781.0	776.70
31	781.0	776.70
32	780.5	776.20
45	780.5	776.0
46	780.5	776.0
47	780.0	775.50
48	780.0	775.50

NOTES:

MINIMUM FINISHED FLOOR ELEVATIONS SHOWN HEREON ARE FOR THE PURPOSES OF PROVIDING GRAVITY WASTEWATER SERVICE TO THE RESPECTIVE LOT.

ACTUAL FINISHED FLOOR ELEVATIONS MAY BE LOWER THAN THE MINIMUM FINISHED FLOOR ELEVATIONS SHOWN HEREON IF GRINDER PUMP SYSTEMS ARE INSTALLED BY THE RESPECTIVE LOT OWNER, OR THE PLUMBING SYSTEM FROM THE HOUSE TO THE SERVICE CONNECTION IS VERIFIED TO BE ADEQUATE BY QUALIFIED PROFESSIONALS.

FOR GRAVITY SEWER SERVICE USE THE MINIMUM ELEVATIONS SHOWN, OTHERWISE A GRINDER PUMP WILL BE REQUIRED. MINIMUM FINISHED FLOOR ELEVATIONS WERE GENERALLY ESTABLISHED BY ASSUMING A 2.0% SLOPE FROM THE SERVICE LINE TO 75-Feet PAST THE R-O-W AND THEN A 2.5-FOOT RISE TO THE FINISHED FLOOR ELEVATION.

E A R T H  T E C H

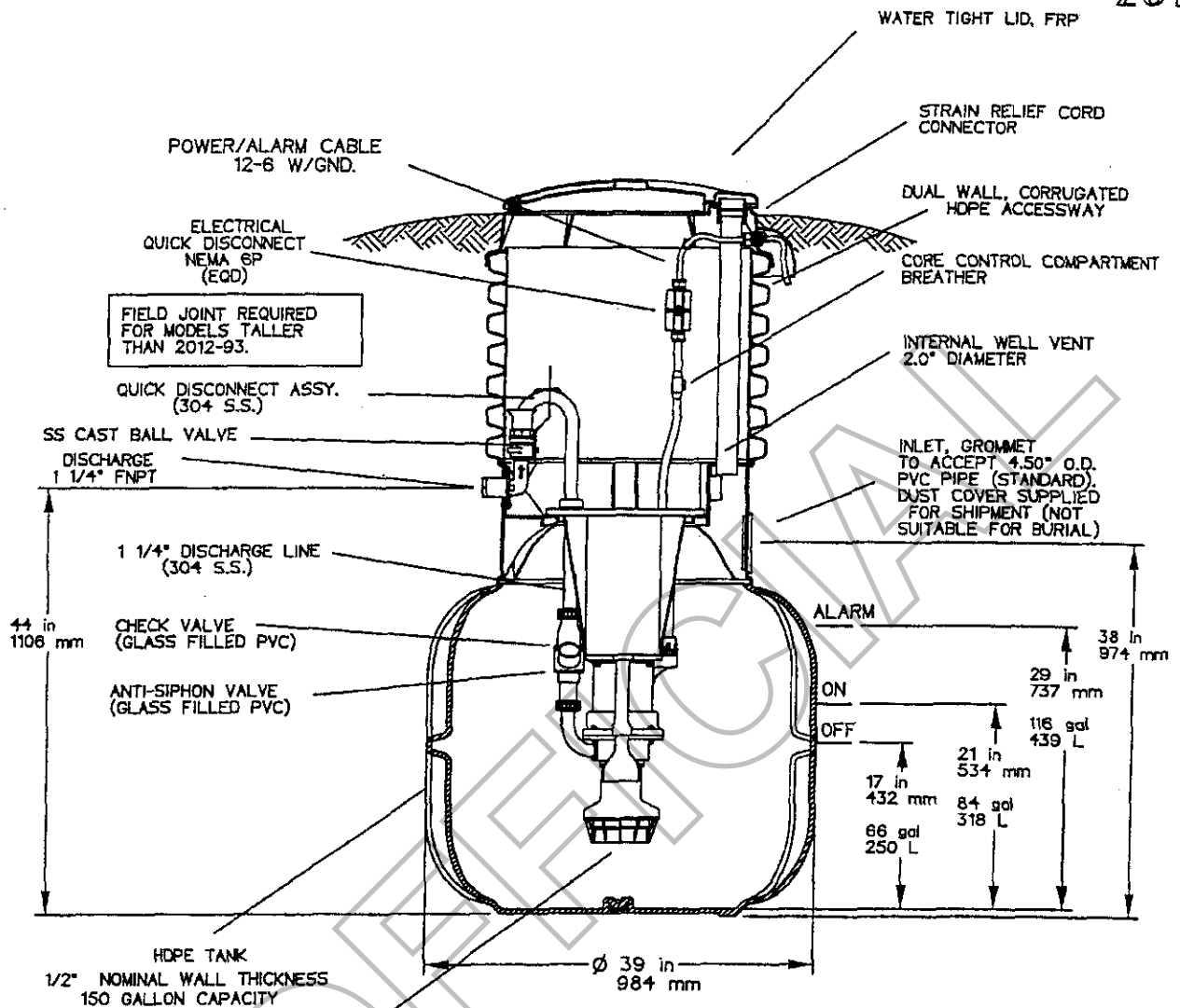
A **tyco** INTERNATIONAL LTD. COMPANY

811 Barton Springs Rd., Ste. 400 Austin, TX. 78704 (512) 474-5500

BARTON CREEK
ABC WEST PHASE II
MINIMUM FINISHED FLOOR ELEVATION TABLE
FOR GRAVITY FLOW FROM LOTS

51330.10060

APRIL, 2004



SEMI-POSITIVE DISPLACEMENT TYPE PUMP
DIRECTLY DRIVEN BY A 1 HP MOTOR
CAPABLE OF DELIVERING 9 gpm AT 138' T.D.H.
(34 lpm AT 42m T.D.H.)

NOTE: A CONCRETE ANCHOR
IS REQUIRED TO PREVENT THE TANK FROM FLOATING.
SEE INSTALLATION INSTRUCTIONS
OR
SPECIFIC CUT SHEET
FOR SIZE AND WEIGHT OF ANCHOR



SGS	CAH	08/13/01	G	1/16
DR BY	CHK'D	DATE	ISSUE	SCALE

eone
SEWER SYSTEMS

MODEL 2012, DETAIL SHEET

PA 0909 P01

TO BE USED ON LOTS 9-14,
25-26, 28-29 AND 33-44.

EARTH  TECH

A **tyco** INTERNATIONAL LTD. COMPANY

811 Barton Springs Rd., Ste. 400 Austin, TX. 78704 (512) 474-5500

BARTON CREEK
ABC WEST PHASE II
GRINDER PUMP DETAILS - E-ONE

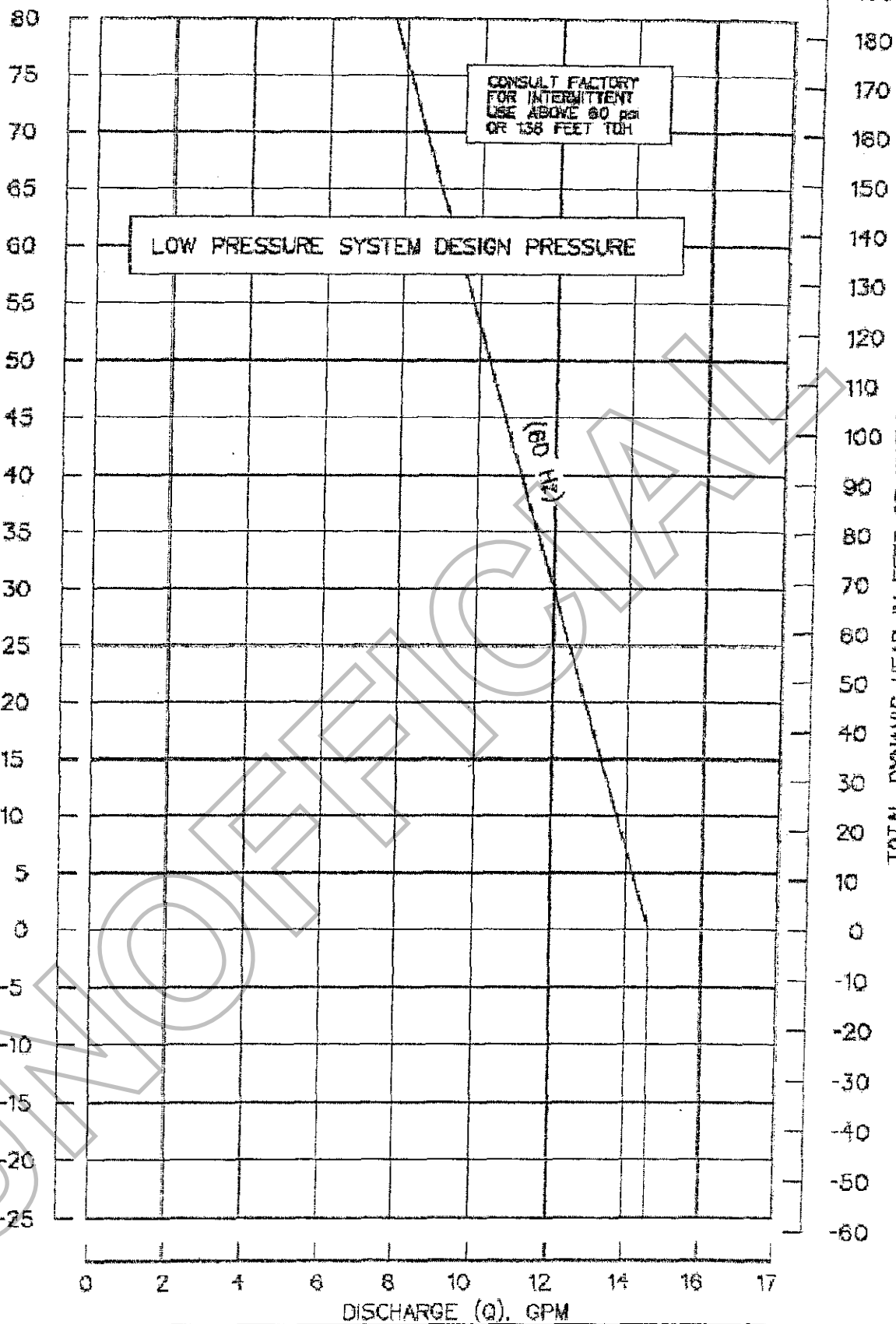
51330.10060

APRIL, 2004

TYPICAL OPERATING PRESSURE

TOTAL DYNAMIC HEAD (H), psig

TOTAL DYNAMIC HEAD IN FEET OF WATER



EARTH TECH



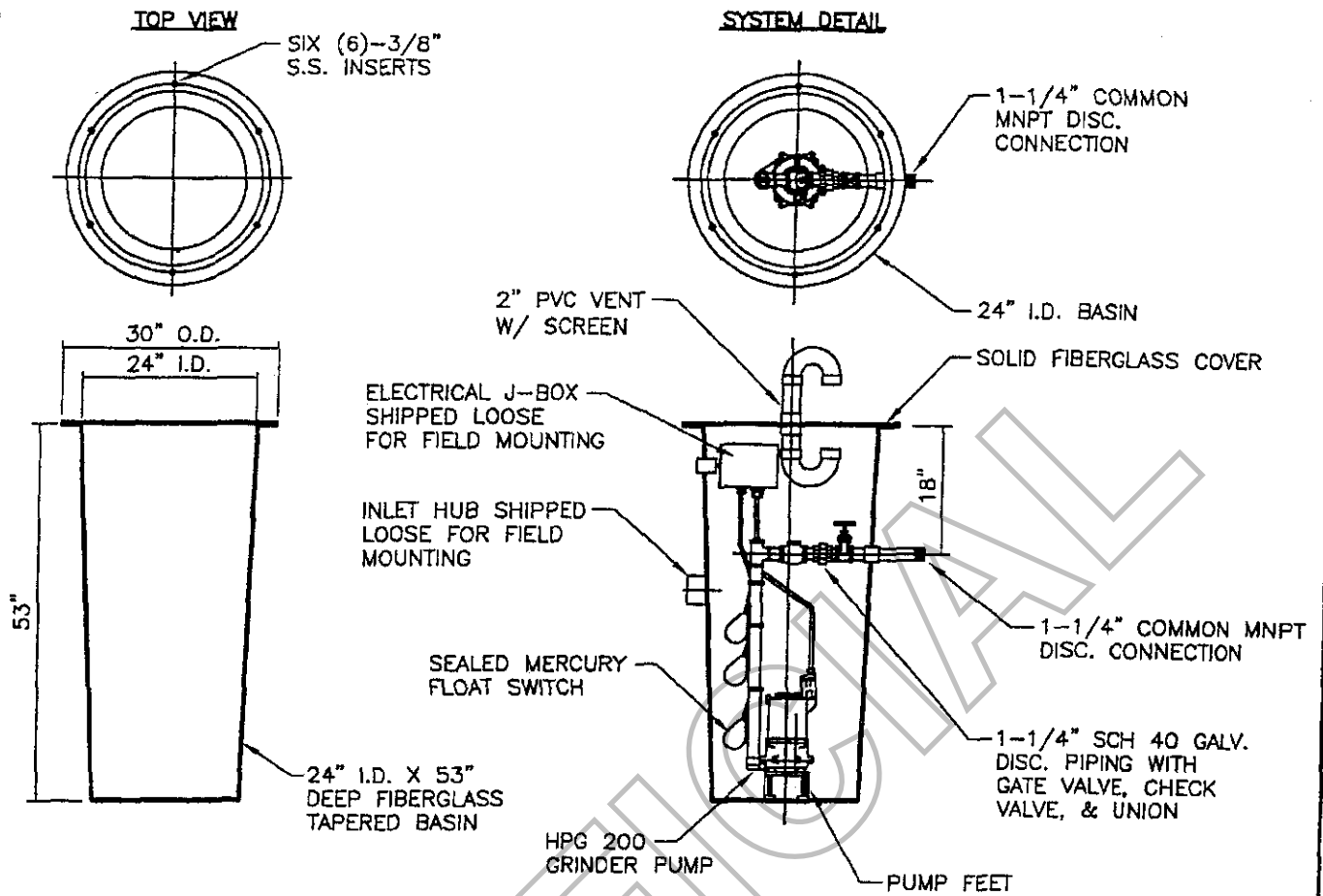
A tyco INTERNATIONAL LTD. COMPANY

811 Barton Springs Rd., Ste. 400 Austin, TX. 78704 (512) 474-5500

BARTON CREEK — ABC WEST PHASE II
E-ONE GRINDER PUMP OPERATING CURVE

51330.10060

APRIL, 2004



NOTES:

1. HYDROMATIC SUBMERSIBLE GRINDER PUMP. M/N HPG200 M2-2 (2 HP 230V/1PH).
2. DISCHARGE PIPING TERMINATES AT 1-1/4" M.N.P.T. CONNECTION.
3. THE INLET/DISCHARGE HUBS ARE "SHIPPED LOOSE" FOR FIELD INSTALLATION.
4. THE "J-BOX IS "SHIPPED LOOSE" FOR FIELD INSTALLATION.

SMITH PUMP GRINDER PUMP DETAILS

TO BE USED ON LOTS CONNECTING TO A GRAVITY SEWER LINE WHERE FF ELEVATIONS ARE PLACED LOWER THAN THOSE IDENTIFIED IN THE MINIMUM FF ELEVATION TABLE.

SMITH PUMP COMPANY			
PRODUCT			
PROJECT			
OWNER			
CONTRACTOR			
ENG.			
DWG. NO.			
DATE	SCALE	BY	CK
12-18-2002	N.T.S.	SCPO	SPCO

EARTH TECH

A **tyco** INTERNATIONAL LTD. COMPANY

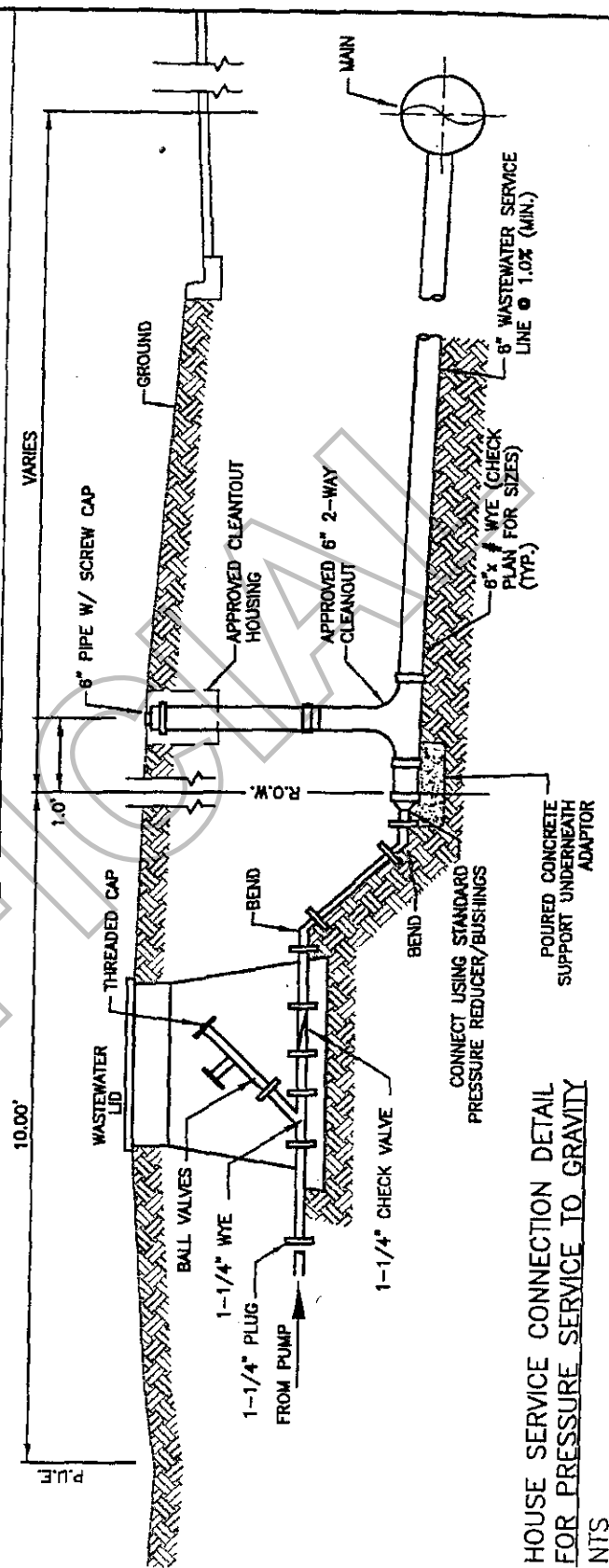
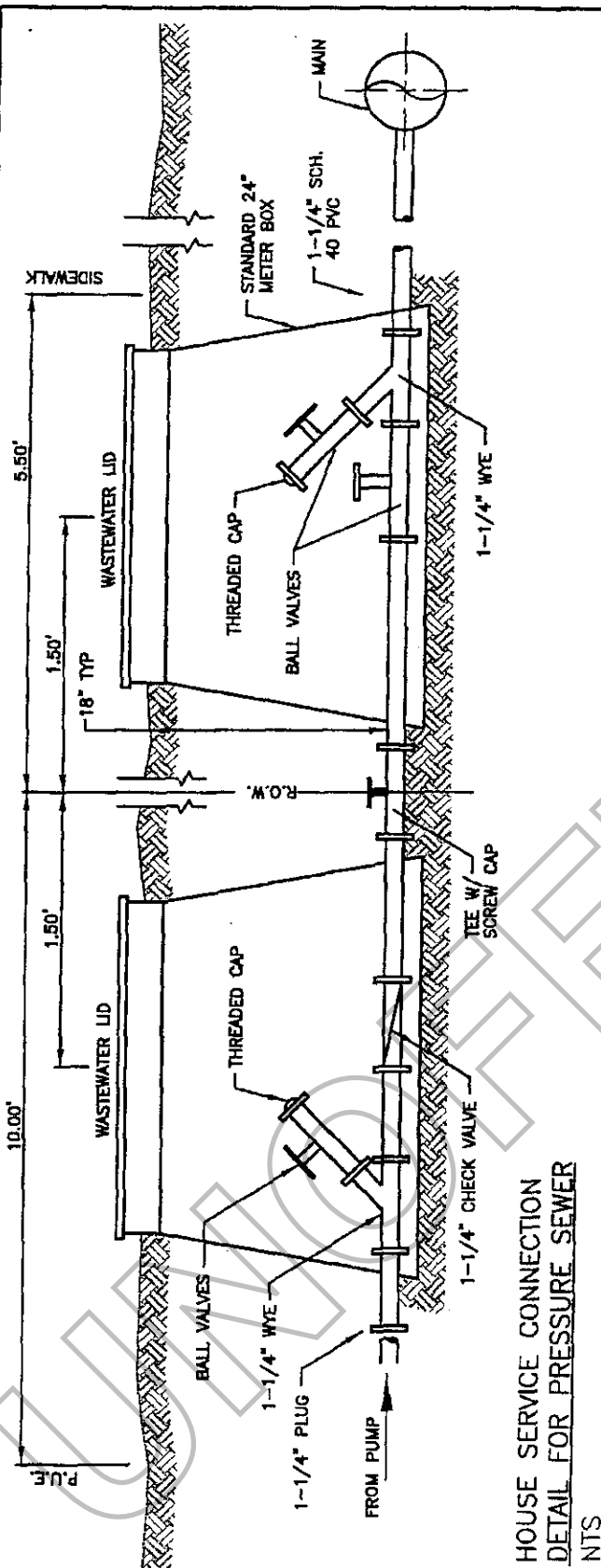
811 Barton Springs Rd., Ste. 400 Austin, TX. 78704 (512) 474-5500

**BARTON CREEK
ABC WEST PHASE II
GRINDER PUMP DETAILS - SMITH PUMP**

51330.10060

APRIL, 2004

L:\work\WATER\51330\10010\CA0\vw_51330a.dwg



EARTH TECH



A tyco INTERNATIONAL LTD. COMPANY

811 Barton Springs Rd., Ste. 400 Austin, TX, 78704 (512) 474-5500

BARTON CREEK
ABC WEST PHASE II
HOUSE SERVICE CONNECTION DETAILS

51330.10060

APRIL, 2004

Trees	
Arizona Cypress	<i>Cupressus arizonica</i>
Ash, Texas	<i>Fraxinus texensis</i>
Big Tooth Maple	<i>Acer grandidentatum</i>
Cypress, Bald	<i>Taxodium distichum</i>
Cypress, Montezuma	<i>Taxodium mucronatum</i>
Elm, Cedar	<i>Ulmus crassifolia</i>
Elm, Lacebark	<i>Ulmus parvifolia</i>
Honey Mesquite	<i>Prosopis glandulosa</i>
Oak, Bur	<i>Quercus macrocarpa</i>
Oak, Chinquapin	<i>Quercus muhlenbergii</i>
Oak, Southern Live	<i>Quercus virginiana</i>
Oak, Escarpment Live	<i>Quercus fusiformis</i>
Oak, Lacey	<i>Quercus glaucoides; Quercus laceyi</i>
Oak, Monterey (Mexican White)	<i>Quercus polymorpha</i>
Oak, Shumard	<i>Quercus shumardii</i>
Oak, Texas Red	<i>Quercus texana (Quercus buckleyi)</i>
Pecan	<i>Carya illinoensis</i>
Soapberry	<i>Sapindus drummondii</i>
Small Trees/Large Shrubs	
Anacacho Orchid Tree	<i>Bauhinia congesta</i>
Buckeye, Mexican	<i>Ungnadia speciosa</i>
Buckeye, Red	<i>Aesculus pavia</i>
Carolina Buckthorn	<i>Rhamnus caroliniana</i>
Cherry Laurel	<i>Prunus caroliniana</i>
Crape Myrtle	<i>Lagerstroemia indica</i>
Desert Willow	<i>Chilopsis linearis</i>
Dogwood, Roughleaf	<i>Cornus drummondii</i>
Escarpment Black Cherry	<i>Prunus serotina var. eximia</i>
Eve's Necklace	<i>Sophora affinis</i>
Goldenball Leadtree	<i>Leucaena retusa</i>
Holly, Possumhaw	<i>Ilex decidua</i>
Holly, Yaupon	<i>Ilex vomitoria</i>
Mountain Laurel, Texas	<i>Sophora secundiflora</i>
Persimmon, Texas	<i>Diospyros texana</i>
Pistachio, Texas	<i>Pistacia texana</i>
Plum, Mexican	<i>Prunus mexicana</i>
Pomegranate	<i>Punica granatum</i>
Redbud, Mexican	<i>Cercis canadensis 'mexicana'</i>
Redbud, Texas	var. 'texensis'
Retama (Palo Verde)	<i>Parkinsonia aculeata</i>
Senna, Flowering	<i>Cassia corymbosa</i>
Smoke Tree, American	<i>Cotinus obovatus</i>
Sumac, Flameleaf	<i>Rhus lanceolata</i>
Viburnum, Rusty Blackhaw	<i>Viburnum rufidulum</i>
Viburnum, Sandankwa	<i>Viburnum suspensum</i>
Shrubs	
Abelia, Glossy	<i>Abelia grandiflora</i>
Agarita	<i>Berberis trifoliata; Mahonia trifoliata</i>
Agave (Century Plant)	Agave sp.
American Beautyberry	<i>Callicarpa americana</i>
Artemesia	<i>Artemesia 'Powis Castle'</i>
Barbados Cherry	<i>Malpighia glabra</i>
Barberry, Japanese	<i>Berberis thunbergii; 'Atropurpurea'</i>
Basket Grass (Sacahuista)	<i>Nolina texana</i>
Black Dalea	<i>Dalea frutescens</i>

Shrubs, Cont'd	
Bush Germander	<i>Teucrium fruticans</i>
Butterfly Bush	<i>Buddleja davidii</i>
Butterfly Bush, Woolly	<i>Buddleja marrubifolia</i>
Coralberry	<i>Symphoricarpos orbiculatus</i>
Cotoneaster	<i>Cotoneaster</i> Sp.
Eleagnus	<i>Eleagnus pungens</i>
Esperanza/Yellow Bells	<i>Tecoma stans</i>
Flame Acanthus	<i>Anisacanthus quadrifidus</i> var. <i>wrightii</i>
Fragrant Mimosa	<i>Mimosa borealis</i>
Holly, Burford	<i>Ilex cornuta</i> 'Burfordii'
Holly, Dwarf Chinese	<i>Ilex cornuta</i> 'Rotunda nana'
Holly, Dwarf Yaupon	<i>Ilex vomitoria</i> 'Nana'
Jasmine, Primrose	<i>Jasminum mesnyi</i>
Kidneywood	<i>Eysenhardtia texana</i>
Lantana, Native	<i>Lantana horrida</i>
Mistflower, Blue (Blue Boneset)	<i>Eupatorium coelestinum</i> ; <i>Conuclium coelestinum</i>
Mistflower, White (Shrubby White Boneset)	<i>Ageratina havanense</i>
Mock Orange	<i>Philadelphus coronarius</i>
Nandina	<i>Nandina domestica</i> ; 'Compacta nana'; 'Gulf Stream'
Oleander	<i>Nerium oleander</i>
Palmetto	<i>Sabal minor</i>
Prickly Pear	<i>Opuntia engelmannii</i> var. <i>lindheimeri</i>
Rose, 'Belinda's Dream'	<i>Rosa</i> 'Belinda's Dream'
Rose, 'Lamarne'	<i>Rosa</i> 'Lamarne'
Rose, 'Livin' Easy'	<i>Rosa</i> 'Livin' Easy'
Rose, 'Marie Pavie'	<i>Rosa</i> 'Marie Pavie'
Rose, 'Martha Gonzales'	<i>Rosa</i> 'Martha Gonzales'
Rose, 'Mutabilis'	<i>Rosa</i> 'Mutabilis'
Rose, 'Nearly Wild'	<i>Rosa</i> 'Nearly Wild'
Rose, 'Old Blush'	<i>Rosa</i> 'Old Blush'
Rose, 'Perle d'Or'	<i>Rosa</i> 'Perle d'Or'
Rock Rose	<i>Pavonia lasiopetala</i>
Rosemary	<i>Rosmarinus officinalis</i>
Sage, Mountain	<i>Salvia regia</i>
Sage, Texas (Cenizo)	<i>Leucophyllum frutescens</i>
Senna, Lindheimer	<i>Senna lindheimeriana</i>
Southern Wax Myrtle	<i>Myrica cerifera</i>
Sumac, Evergreen	<i>Rhus virens</i>
Sumac, Fragrant (Aromatic)	<i>Rhus aromatica</i>
Sotol, Texas	<i>Dasylirion texanum</i>
Turk's Cap	<i>Malvaviscus arboreus</i>
Yucca, Paleleaf	<i>Yucca pallida</i>
Yucca, Red	<i>Hesperaloe parviflora</i>
Yucca, Softleaf	<i>Yucca recurvifolia</i>
Yucca, Twistleaf	<i>Yucca rupicola</i>
Perennials	
Black-eyed Susan	<i>Rudbeckia hirta</i>
Bulbine	<i>B. frutescens</i> ; <i>B. caulescens</i>
Bush Morning Glory	<i>Ipomoea fistulosa</i>
Butterfly Weed	<i>Asclepias tuberosa</i>
Butterfly Weed 'Mexican'	<i>Asclepias curassavica</i>
Cast Iron Plant	<i>Aspidistra elatior</i>
Chile Pequin	<i>Capsicum annum</i>
Cigar Plant	<i>Cuphea micropetala</i>
Columbine, Red	<i>Aquilegia canadensis</i>
Columbine, Yellow	<i>Aquilegia chrysantha</i> ; 'Texas Gold'

Perennials Cont'd	
Coreopsis	<i>Coreopsis lanceolata</i>
Daisy, Blackfoot	<i>Melampodium leucanthum</i>
Daisy, Copper Canyon	<i>Tagetes lemmonii</i>
Damianita	<i>Chrysactina mexicana</i>
Fall Aster	<i>Aster oblongifolius</i>
Fern, River	<i>Thelypteris kunthii</i>
Firebush	<i>Hamelia patens</i>
Guara	<i>Guara lindheimeri</i>
Gayfeather	<i>Liatris mucronata</i>
Gregg Dalea	<i>Dalea greggii</i>
Hibiscus, Perennial	<i>Hibiscus moscheutos; Hibiscus coccineus</i>
Honeysuckle, Mexican	<i>Justicia spicigera</i>
Hymenoxys (Four Nerve Daisy)	<i>Tetrameuris scaposa</i>
Indigo Spires	<i>Salvia 'Indigo Spires'</i>
Iris, Bearded	<i>Iris albicans</i>
Iris, Butterfly/Bicolor (African)	<i>Dietes sp</i>
Lamb's Ear	<i>Stachys byzantina</i>
Lantana	<i>Lantana x hybrida (many varieties)</i>
Lantana, Trailing	<i>Lantana montevidensis</i>
Marigold, Mexican Mint	<i>Tagetes lucida</i>
Obedient Plant, Fall	<i>Physostegia virginiana</i>
Oregano, Mexican	<i>Poliomintha longiflora</i>
Penstemon, Scarlet	<i>Penstemon triflorus (other varieties available)</i>
Phlox, Garden	<i>Phlox paniculata</i>
Pink Skullcap	<i>Scutellaria suffrutescens</i>
Plumbago	<i>Plumbago auriculata</i>
Poinciana, Red Bird of Paradise; Pride of Barbados	<i>Caesalpinia pulcherrima</i>
Primrose, Missouri	<i>Oenothera missouriensis</i>
Purple Coneflower	<i>Echinacea purpurea</i>
Ruellia	<i>Ruellia brittoniana</i>
Sage, Cedar	<i>Salvia roemeriana</i>
Sage, Jerusalem	<i>Phlomis fruticosa</i>
Sage, Majestic	<i>Salvia guaranitica</i>
Sage, Mealy Blue	<i>Salvia farinacea</i>
Sage, Mexican Bush	<i>Salvia leucantha</i>
Sage, Penstemon; Big Red Sage	<i>Salvia penstemonoides</i>
Sage, Russian	<i>Perovskia atricapsifolia</i>
Sage, Tropical	<i>Salvia coccinea</i>
Salvia, Cherry (Autumn Sage)	<i>Salvia greggii</i>
Shrimp Plant	<i>Justicia brandegeana</i>
Texas Betony	<i>Stachys coccinea</i>
Verbena, Prairie	<i>Verbena bipinnatifida</i>
Yarrow	<i>Achillea millefolium</i>
Zexmenia	<i>Wedelia texana</i>
Ornamental Grasses	
Bluestem, Big	<i>Andropogon gerardii</i>
Bluestem, Bushy	<i>Andropogon glomeratus</i>
Bluestem, Little	<i>Schizachyrium scoparium</i>
Dwarf Fountain Grass	<i>Pennisetum alopecuroides</i>
Indian Grass	<i>Sorghastrum nutans</i>
Inland Sea Oats	<i>Chasmanthium latifolium</i>
Mexican Feathergrass (Wiregrass)	<i>Stipa tenuissima</i>
Muhly, Bamboo	<i>Muhlenbergia dumosa</i>
Muhly, Big	<i>Muhlenbergia lindheimeri</i>
Muhly, Deer	<i>Muhlenbergia rigens</i>
Muhly, Gulf	<i>Muhlenbergia capillaris</i>

Ornamental Grasses, Condit	
Muhly, Seep	<i>Muhlenbergia reverchonii</i>
Sideoats Grama	<i>Bouteloua curtipendula</i>
Wild Rye	<i>Elymus canadensis</i>
Vines	
Asian Jasmine	<i>Trachelospermum asiaticum</i>
Carolina Jessamine	<i>Gelsemium sempervirens</i>
Coral Vine	<i>Antigonon leptopus</i>
Crossvine	<i>Bignonia capreolata</i>
Fig Vine	<i>Ficus pumila</i>
Honeysuckle, Coral	<i>Lonicera sempervirens</i>
Lady Banksia Rose	<i>Rosa banksiae</i>
Passion Vine	<i>Passiflora incarnata</i>
Trumpet Vine	<i>Campsis radicans</i>
Virginia Creeper	<i>Parthenocissus quinquefolia</i>
Groundcover	
Aztec Grass	<i>Ophiopogon japonicus</i>
Frogfruit	<i>Phyla incisa</i>
Horseherb	<i>Calyptocarpus vialis</i>
Leadwort Plumbago	<i>Cerastigma plumbaginoides</i>
Liriope	<i>Liriope muscari</i>
Monkey Grass (Mondo Grass)	<i>Ophiopogon japonicus</i>
Oregano	<i>Origanum vulgare</i>
Periwinkle, Littleleaf	<i>Vinca minor</i>
Pigeonberry	<i>Rivina humilis</i>
Purple Heart	<i>Secreasea pallida</i>
Santolina (Lavender Cotton)	<i>Santolina chamaecyparissus</i>
Sedge, Berkeley	<i>Carex tumulicola</i>
Sedge, Meadow	<i>Carex perdentata</i>
Sedge, Texas	<i>Carex texensis</i>
Sedum (Stonecrop)	<i>Sedum nuttallianum</i>
Silver Ponyfoot	<i>Dichondra argentea</i>
Wooly Stemodia	<i>Stemodia lanata (Stemodia tomentosa)</i>
Turf Grasses	
Bermuda	'Tif 419', 'Sahara', 'Baby', 'Common'
Buffalo	'609', 'Stampede', 'Prairie'
Zoysia, Fine Leaf	'Z. matrella', 'Emerald', 'Zorro'
Zoysia, Course Leaf	'Z. japonica', 'El Toro', 'JaMur', 'Palisades'

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2004 Nov 12 12:57 PM 2004212830

HERRERAR \$66.00

 DANA DEBEAUVOIR COUNTY CLERK
 TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

Jun 12, 2020 04:45 PM Fee: \$42.00

2020097624

Electronically Recorded

STATE OF TEXAS
COUNTY OF TRAVIS

**AMENDMENT OF RULES AND REGULATIONS
OF
THE BARTON CREEK ABC WEST COMMUNITY, INC.**
(Regarding Leasing)

Document reference. Reference is hereby made to that certain Development Area Declaration for Barton Creek ABC West Phase I filed of record in Vol 13281 Page 35 of the Official Public Records of Travis County Texas, and to the Development Area Declaration for Barton Creek North AKA Barton Creek ABC West Phase II filed of record in Document no. 2004070709 of the Official Public Records of Travis County, Texas. These documents together, along with all subsequent amendments, are referred to as the “**Declaration**”.
(Note: The original Phase II HOA was merged into The Barton Creek ABC West Community, Inc. association (“Association”), which now is the homeowner’s association for all property subject to the Declaration.)

WHEREAS the Declaration provides that owners of lots subject to the Declaration are automatically made members of the Association;

WHEREAS the Association, acting through its board of directors (the “**Board**”), is authorized to adopt and amend rules and regulations governing the property subject to the Declaration and the operations of the Association pursuant to the Declaration and bylaws of the Association;

WHEREAS the Board has voted to adopt additional rules regarding leasing;

THEREFORE the Leasing Rules attached as Exhibit “A” have been, and by these presents are, ADOPTED and APPROVED.

Subject solely to the amendments contained in Exhibit “A”, the rules remain in full force and effect.

THE BARTON CREEK ABC WEST COMMUNITY, INC.

Acting by and through its Board of Directors

Signature:

Marnie E. Cervenka

Printed Name:

MARNIE E. CERVENKA

Title:

President

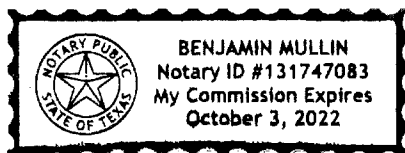
Exhibit “A”: Leasing Rules

Acknowledgement

STATE OF TEXAS §

COUNTY OF Travis §

This instrument was executed before me on the 29th day of April, 2020, by Marnie E. Cervenka in the capacity stated above.



Benjamin Mullin
Notary Public, State of Texas

IMPORTANT NOTE TO OWNERS AND TENANTS:

The purpose of these leasing rules is to help ensure the right to peaceable enjoyment of the community by all residents; tenants, owners, or other occupants. It is important that all owners who desire to lease their property read and follow these rules to avoid inadvertent violation.

The rules follow. Among the more important provisions are:

- *All leases must be in writing (see also Declaration Section 2.01)**
- *Tenants must comply with all governing documents of the HOA**
- *Owners are responsible for any violations by tenants, occupants, or their guests**
- *The minimum lease term is 6 months (see also Declaration Section 2.01)**
- * No Unit Owner may advertise the lease of any Unit for a term of less than the minimum lease term.**
- * Fines may assess for any violations**

EXHIBIT "A"

LEASING

1. **Definition of Leasing.** A Lot is deemed "leased," and its occupants deemed "tenants," for purposes of this Section and other leasing-related provisions in the governing documents, except when: (i) the Lot is occupied by the Unit owner, (ii) the Lot is occupied by a person immediately related to the owner by blood, marriage or adoption¹, (iii) the Lot is vacant, or (iv) title to the Lot is held by a corporation, trust, partnership, or other legal entity, with the primary purpose of providing occupancy to the current occupant. This definition applies irrespective of whether there is a written agreement between the Lot owner and the occupant(s) or whether any financial consideration has been provided for the right of occupancy.

2. **General Lease Conditions.** The leasing of Lots is subject to the following general conditions:
 - (1) No Lot may be rented for transient or hotel purposes or for an **initial lease term of less six months**;
 - (2) no Lot may be subdivided for rent purposes, and not less than an entire home may be leased;
 - (3) all leases must be in writing and must be made subject to the governing documents;
 - (4) an owner is responsible for providing his tenants with copies of the governing documents and notifying them of changes thereto; owners are responsible for all governing documents violations by their tenants, occupants, or their guests;
 - (5) each tenant is subject to and must comply with all provisions of the governing documents, federal and State laws, and local ordinances; and
 - (6) **No Unit Owner may advertise the lease of any Unit for a term of less than the minimum lease term.** All advertisements for the lease of a Unit must clearly state that the minimum lease term required by this rule (or any longer term the Owner wishes to apply). **Daily or weekly rates (or any rate less than monthly) may not be advertised.** Fines will automatically be assessed for any violation of this rule, regardless of whether the advertised Unit is actually leased for a period of less than the minimum lease term.

If a tenant fails to fulfill the minimum lease term (moves out early prior to six months having elapsed since lease initiation), the property may not be re-occupied by the owner or another tenant without prior approval of the board and unless any replacement lease is in compliance with this rule. This is to prevent a situation for example where a home is leased "for six months" but in reality is leased for the weekend, or a week, and the tenant "leaves early" and the owner moves back in.

3. **Violations.** Any violation of this rule will automatically result in a fine levy of the greater of (i) \$2,500 per day of violation, or (ii) the advertised daily rental rate (prorated as appropriate) plus \$100, per day of violation.

¹ A situation where an owner lives with an unrelated individual for purpose of companionship, regardless of whether the companion contributes to living expenses, will not be considered a lease under these rules.

Niemann & Heyer, L.L.P.
Attorneys At Law
Westgate Building, Suite 313
1122 Colorado Street
Austin, Texas 78701

/Volumes/File Server/CLIENTS/Wimberly Lane aka Barton Creek ABC West /Rules Leasing Rules 4-2020 .doc



**THE BARTON CREEK ABC WEST COMMUNITY, INC.
SECRETARY'S CERTIFICATE**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The undersigned hereby certifies that she is the duly elected, qualified and acting Secretary of The Barton Creek ABC West Community, Inc., a Texas non-profit corporation ("Association") and that:

gpg

Attached hereto are true and correct copies of the following Association documents which have been duly approved by the Board of Directors:

1. Records Retention Policy
2. Records Production Policy
3. Alternate Payment Schedule and Payment Plan Policy

IN WITNESS WHEREOF, the undersigned has executed this certificate on the 14 day of December, 2011.

By: *Mark Davis*
MARK DAVIS, Secretary
Board of Directors

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 14 day of December, 2011, by MARK DAVIS, Secretary of the Board of Directors of The Barton Creek ABC West Community, Inc. on behalf of said non-profit corporation.

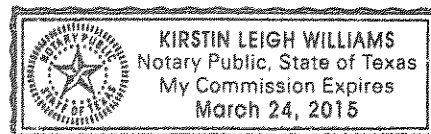
K. Williams
Notary Public, State of Texas

[SEAL]

My Commission Expires: 3/24/15

AFTER RECORDING RETURN TO:

Bill Flickinger
Willatt & Flickinger
2001 North Lamar
Austin, Texas 78705



THE BARTON CREEK ABC WEST COMMUNITY, INC.

Records Retention Schedule Adopted to be effective January 1, 2012

The Board of Directors of The Barton Creek ABC West Community, Inc. adopts the following document retention policy in compliance with Section 209.005(m), Texas Property Code:

Governing Documents

Declarations with amendments, Articles of Incorporation, Bylaws, Guidelines, Rules, Restrictions, Policies, Procedures, and all amendments variances, easements, licenses, plats.....perm

Homeowner, Board and Committee Meeting Minutes, Resolutions, Unanimous Actions.....CY+7

Financial Records

Audits and supporting documents.....CY+7

Financial Statements and supporting documents.....CY+7

Tax returns and supporting documents.....CY+7

Owner Account Information.....CY+5

Terminated/Inactive Contracts

Management Contracts.....CY+4

Maintenance Contracts.....CY+4

Settlement Agreements.....Perm

Other contracts, agreements, warranties, etc.....CY+4

Insurance Policies.....CY+7

Correspondence/General Files

Disputes.....perm

Other.....CY+2

Architectural Control Committee

Site plans, elevations, pools, landscape plans, variances, additions, issues needing correction, resale certificates.....Perm

Other construction plans.....CY+5

Correspondence.....CY+5

Other.....CY+5

Litigation Files

Active.....perm

Closed.....perm or as advised by counsel

THE BARTON CREEK ABC WEST COMMUNITY, INC.

RECORDS PRODUCTION POLICY

ADOPTED to be effective January 1, 2012

The following Records Production Policy has been approved by the Board of Directors:

I. Copies of Association records will be available to all Owners upon proper request and at their own expense. A proper request:

- a. is sent certified mail to the Association's address as reflected in its most recent management certificate;
- b. is from an Owner, or the Owner's agent, attorney or certified public accountant; and
- c. contains sufficient detail to identify the records being requested.

II. Owners may request to inspect the books and records or may request copies of specific records.

- a. If the Owner makes a request to inspect the books and records, then the Association will respond within **10 business days** of the request, providing the dates and times the records will be made available and the location of the records. The Association and the Owner shall arrange for a mutually agreeable time to conduct the inspection. The Association shall provide the Owner with copies of specific documents upon the Owner paying the Association the cost thereof.
- b. If an Owner makes a request for copies of specific records, and the Association can provide the records easily or with no cost, then the Association will provide the records to the Owner within 10 business days of the Owner's request.
- c. If the Owner makes a request for copies of specific records, the Association shall send a response letter advising on the date that the records will be made available (**within 15 business days**) and the cost the Owner must pay before the records will be provided. Upon paying the cost to provide the records, the Association shall provide the records to the Owner.

III. The Association hereby adopts the following schedule of costs:

<u>COPIES</u>	10 cents per page, for a regular 8.5" x 11" page 50 cents per page, for pages 11" x 17" or greater Actual cost, for specialty paper (color, photograph, map, etc.) \$1.00 for each CD or audio cassette \$3.00 for each DVD
<u>LABOR</u>	\$15.00 per hour for actual time to locate, compile and reproduce the records (can only charge if request is greater than 50 pages in length)
<u>OVERHEAD</u>	20% of the total labor charge (can only charge if request is greater than 50 pages in length)

MATERIALS Actual costs of labels, boxes, folders, and other supplies used in producing the records, along with postage for mailing the records

- IV. The Association hereby adopts the following form of response to Owners who request to inspect the Association's Books and Records:

THE BARTON CREEK ABC WEST COMMUNITY, INC.
RESPONSE TO REQUEST TO INSPECT ASSOCIATION RECORDS

_____ (date)

Dear Homeowner:

On _____, the Association received your request to inspect the books and records of the Association. The books and records of the Association are available for you to inspect on regular business days, between the hours of 9 a.m. and 5 p.m., at the office of _____, located at _____, Austin, Texas _____.

Please contact the Association's manager at _____ (phone number) to arrange for a mutually agreeable time for you to come and inspect the books and records. Please be advised that if you desire copies of specific records during or after the inspection, you must first pay the associated costs before the copies will be provided to you. A schedule of costs is included with this response.

Very truly yours,

The Barton Creek ABC West Community, Inc.

- V. The Association hereby adopts the following form of response to Owners who request copies of specific records:

THE BARTON CREEK ABC WEST COMMUNITY, INC.
RESPONSE TO REQUEST FOR ASSOCIATION RECORDS

_____ (date)

Dear Homeowner:

On _____, the Association received your request for copies of specific Association records. We are unable to provide you with the requested records within 10 business days of your request. However, the requested records will be available to you no later than 15 business days after the date of this response.

In order to obtain the records, you must first pay the Association the cost of providing the records to you. The estimated cost to obtain the records you requested is \$ _____. Upon receiving payment, the Association will mail the requested documents to you. You may also make payment and pick up the documents in person at the office of _____, located at _____, _____, Texas _____.

Very truly yours,

The Barton Creek ABC West Community, Inc.

- VI. If the estimated cost provided to the Owner is more or less than the actual cost of producing the documents, the Association shall, within 30 days after providing the records, submit to the Owner either an invoice for additional amounts owed or a refund of the overages paid by the Owner.
- VII. Unless authorized in writing or by court order, the Association will not provide copies of any records that contain the personal information of an Owner, including restriction violations, delinquent assessments, financial information and contact information (other than an Owner's address); additionally, no privileged attorney-client communications or attorney work product documents will be provided; and no employee information (including personnel file) will be released.
- VIII. With regards to the inspection of ballots, only persons who tabulate ballots under 209.00594, Texas Property Code, may be given access to the ballots cast in an election or vote.

THE BARTON CREEK ABC WEST COMMUNITY, INC.
ALTERNATE PAYMENT SCHEDULE AND PAYMENT PLAN POLICY

The Board of Directors of The Barton Creek ABC West Community, Inc. hereby adopts this Alternate Payment Schedule and Payment Plan Policy ("Policy") to comply with Section 209.0062, Texas Property Code, and directs the Property Manager to implement the following:

1. Members are entitled to pay their delinquent assessments according to the terms of this approved Policy, as long as a Member has not failed to honor the terms of a previous payment plan during the past two (2) years;
2. The Association cannot charge late fees during the course of a payment plan, but can charge interest at the rate it is entitled to under its Governing Documents and can charge reasonable costs of administering the payment plan (the "Administrative Costs"). The Administrative Costs for the payment plan described in paragraph 3 shall not exceed \$20. The Board may adjust the actual Administrative Costs from time to time;
3. Upon request and prepayment of the Administrative Costs, all Members are automatically approved for a payment plan of three (3) months which shall include all amounts owed by the Member, shall include all amounts that will come due during the term of the payment plan, shall account for the prepaid costs of the administration of the payment plan, and each payment shall be equal. Administrative Costs shall be nonrefundable even if the Member pays in full prior to the scheduled dates for payment in the payment plan. The deadline for requesting the payment plan, for all past due accounts not already referred to the Association's attorney, shall be 30 days after the date of the final collection letter from the Property Manager. For all past due accounts currently with the Association's attorney, such deadline shall be 30 days after the date of notice of availability of the payment plan;
4. If a Member defaults on any payment plan, the payment plan is automatically terminated, and the Association is not obligated to make another payment plan with the owner for the next two (2) years;
5. All payments received pursuant to the approved payment plan shall be applied in the order required by Section 209.0063, Texas Property Code. The Association is not required to provide notice of any default under the terms of a payment plan. If a Member defaults in payment of the approved plan, they will be subject to further collection efforts, including possible referral to the Association's attorney; and
6. To the extent this Policy conflicts with any other policy or procedure of the Association, this Policy shall prevail.

ADOPTED to be effective January 1, 2012.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

Sep 19, 2019 02:56 PM Fee: \$34.00

2019145286

Electronically Recorded

This page is
intentionally added for
electronic file stamp.

SEP 16 2019

THE BARTON CREEK ABC WEST COMMUNITY, INC.

SECRETARY'S CERTIFICATE

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

The undersigned hereby certifies that he/she is the duly elected, qualified and acting Secretary of The Barton Creek ABC West Community, Inc., a Texas non-profit corporation ("Association") and that:

Attached hereto is a true and correct copy of the Collection Directive for Wimberly Lane, duly approved by the Board of Directors of the Association.

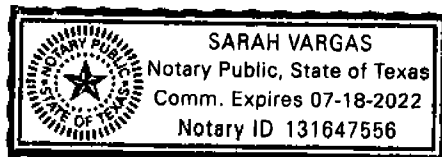
IN WITNESS WHEREOF, the undersigned has executed this certificate on the 9 day of September, 2019.

By: *Ana M. Jordan*
 Printed Name: ANA M. JORDAN
 Secretary, Board of Directors

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 9 day of September, 2019, by *Ana M. Jordan*, Secretary of the Board of Directors of The Barton Creek ABC West Community, Inc., on behalf of said non-profit corporation.

[SEAL]



Sarah Vargas
 Notary Public, State of Texas

My Commission Expires: 7/18/2022

AFTER RECORDING RETURN TO:

Bill Flickinger
 Willatt & Flickinger, PLLC
 12912 Hill Country Blvd., Ste. F-232
 Austin, Texas 78738

COLLECTION DIRECTIVE

ASSOCIATION: **WIMBERLY LANE**

COLLECTION PROCESS	ACTION	LATE FEE	LATE INTEREST	LATE DATE	NOTES
Friendly Reminder	Mailed after late date with late fee/interest added	\$25/Month		30TH of each Month	Send until paid in full or trigger is reached
CMA Demand	Trigger: 10 months 35 Day Demand	\$25/Month		30TH of each Month	Certified & Regular Mail Legal Action Pending

ASSOCIATION ATTORNEY:
Willatt & Flickinger

PAYMENT PLAN:
\$20 HOA Admin Fee

OTHER:
\$25 NSF

Marnie E. Cervenka
Board Signature

MARNIE E. Cervenka
Printed Name

May 23, 2019
Date
President
Board Position

SECRETARY'S CERTIFICATE

STATE OF TEXAS §

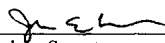
KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TRAVIS §

The undersigned hereby certifies that he is the duly elected, qualified and acting Secretary of The Barton Creek ABC West Community, Inc., a Texas non-profit corporation (the "Corporation"), and that

- (1) Attached hereto as Exhibit "A" and made a part hereof is a true and correct copy of the Bylaws of the Corporation

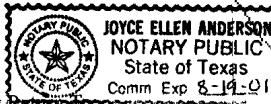
IN WITNESS WHEREOF, the undersigned has executed this certificate on the 16th day of December, 1999

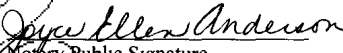

John Baker, Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on December 16, 1999, by John Baker, Secretary of The Barton Creek ABC West Community, Inc., on behalf of said corporation




Notary Public Signature

Upon Recording Return To

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

BYLAWS
OF
THE BARTON CREEK ABC WEST COMMUNITY, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is The Barton Creek ABC West Community, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at 98 San Jacinto Blvd., Suite 220, Austin, Texas 78701 but meetings of members and directors may be held at such places within the State of Texas, County of Travis, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in these Bylaws shall have the meanings hereinafter specified:

Section 2.1. Articles. "Articles" shall mean the Articles of Incorporation of The Barton Creek ABC West Community, Inc. which will be filed in the office of the Secretary of State of the State of Texas, as the same may from time to time be amended.

Section 2.2. Assessment. "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of the Declaration.

Section 2.3. Association. "Association" shall mean and refer to The Barton Creek ABC West Community, Inc.

Section 2.4. Association Property. "Association Property" shall mean all real or personal property now or hereafter owned by the Association, including without limitation, all easement estates, licenses, leasehold estates and other interests of any kind in and to real or personal property which are now are hereafter owned or held by the Association.

Section 2.5. Association Restrictions. "Association Restrictions" shall mean the Declaration as the same may be amended from time to time, together with the Articles, Bylaws, Committee Rules, and Association Rules from time to time in effect.

Section 2.6. Association Rules. "Association Rules" shall mean the rules and regulations adopted by the Board pursuant to the Declaration, as the same may be amended from time to time.

Section 2.7. Board. "Board" shall mean the Board of Directors of the Association.

Section 2.8. Bylaws. "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board and as from time to time amended.

Section 2.9. Declarant. "Declarant" shall mean Stratus Properties Operating Co., a Delaware general partnership and its duly authorized representatives or its successors or assigns; provided that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

EXHIBIT A

Section 2.10. Declaration. "Declaration" shall mean the "Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC West, Phase 1" recorded in the Real Property Records of Travis County, Texas, as the same may be amended from time to time.

Section 2.11. Developer. "Developer" shall mean and refer to Oly Stratus West I, G.P., a Texas general partnership, its successors or assigns.

Section 2.12. Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property, together with all improvements located thereon.

Section 2.13. Manager. "Manager" shall mean the person, firm, or corporation, if any, employed by the Association pursuant to the Declaration and delegated the duties, powers, or functions of the Association.

Section 2.14. Member. "Member" or "Members" shall mean any person(s), entity or entities holding membership privileges in the Association as provided in the Declaration.

Section 2.15. Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

Section 2.16. Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any lien or liens upon any portion of the Property.

Section 2.17. Owner. "Owner" or "Owners" shall mean the person(s), entity or entities, including Developer and Declarant, holding a fee simple interest in any Lot, but shall not include the Mortgagee of a Mortgage.

Section 2.18. Property. "Property" shall mean and refer to the property described in the Declaration, plus any additional land added thereto in accordance with the procedures set forth therein.

ARTICLE III MEETING OF MEMBERS

Section 3.1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter unless a different date is selected by the Board of Directors. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3.2. Special Meetings. Special meetings of the Members may be called at any time by the President or the Board of Directors, or upon written request of the Members who are entitled to vote fifty-one percent (51%) or more of the votes of the Association.

Section 3.3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) and no more than fifty (50) days before such meeting to each Member entitled to vote at the meeting, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty-five percent (25%) of the total votes of the membership shall constitute a quorum for any action, except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum is not present or represented at any meeting, the Members entitled to vote at the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.

Section 3.5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 4.1. Number. The affairs of this Association shall be managed by a Board of three (3) Directors until the first annual or subsequent meeting, at which time the number of members of the Board of Directors may be changed by resolution of the Directors; provided, however, the minimum number of Directors shall be three (3).

Section 4.2. Term of Office. At the first annual meeting the Members shall elect one (1) Director for a term of three (3) years, one (1) Director for a term of two (2) years, and one (1) Director for a term of one (1) year; and at each annual meeting thereafter the Members shall elect each Director for a term of three (3) years.

Section 4.3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation, or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of the members.

Section 4.4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 5.1. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board and two members of the Association. The Nominating Committee shall be appointed by the Board prior to or during each annual meeting of the Members. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or nonmembers.

Section 5.2. Election. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

Section 6.1. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 6.3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

ARTICLE VII POWERS AND DUTIES OF THE BOARD

Section 7.1. Powers. The Board shall have power to undertake any of the following actions to the extent and only to the extent that such actions are undertaken in furtherance of the purposes of the Association as set forth in Article III of the Declaration, as amended:

- (a) adopt and publish the Association Rules, including regulations governing the use of the Association Property and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
 - (b) suspend the voting rights and right to use of the Association Property during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, or after notice and hearing, for any period during which an infraction of the Association Rules exists;
 - (c) exercise for the Association all powers, duties and authority vested in or related to this Association and not reserved to the membership by other provisions of the Association Restrictions;
 - (d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
 - (e) employ such employees as they deem necessary, and to prescribe their duties;
 - (f) as more fully provided in the Declaration, to:
 - (1) fix the amount of the Assessments against each Lot in advance of each annual assessment period and any other assessments provided by the Declaration; and
 - (2) foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
 - (g) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid and to levy a reasonable charge for the issuance of these certificates (it being understood that if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment);
 - (h) procure and maintain adequate liability and hazard insurance on property owned by the Association;
 - (i) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- and
- (j) exercise such other and further powers as provided in the Declaration.

Section 7.2. Duties. It shall be the duty of the Board to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members who are entitled to cast fifty-one percent (51%) of all outstanding votes; and

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 8.1. Enumeration of Offices. The officers of this Association shall be a President who shall at all times be a member of the Board, and one or more Vice-Presidents, a Secretary and a Treasurer, and such other officers as the Board may from time to time create by resolution.

Section 8.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 8.3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed, or otherwise disqualified to serve.

Section 8.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6. Vacancies. A vacancy in any office may be filled through appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4.

Section 8.8. Duties. The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** Each Vice President shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **Assistant Secretaries.** Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him or her by the Secretary, the President, the Board or any committee established by the Board.

(e) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall co-sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public

accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

ARTICLE IX OTHER COMMITTEES OF THE BOARD OF DIRECTORS

The Board may, by resolution adopted by affirmative vote of a majority of the number of Directors fixed by these Bylaws, designate two or more Directors (with such alternates, if any, as may be deemed desirable) to constitute another committee or committees for any purpose; provided, that any such other committee or committees shall have and may exercise only the power of recommending action to the Board of Directors and of carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Association Restrictions shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association Assessments which are secured by a continuing lien upon the property against which the Assessments are made. Assessments shall be due and payable in accordance with the Declaration. If any Assessment is not paid before becoming delinquent, the Owner responsible for the payment thereof may be required by the Board to pay a late charge at such rate as the Board may designate from time to time and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot or Lots owned by such Owner, and all costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Association Property or abandonment of his Lot or Lots.

ARTICLE XII CORPORATE SEAL

The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

ARTICLE XIII AMENDMENTS

Section 13.1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of all the Members of the Association provided that such amendment has been approved by Members of the Association entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association.

Section 13.2. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 14.1. Definitions. In this Article XIV:

(a) "Indemnitee" means (i) any present or former director, advisory director or officer of the Association; (ii) any person who, while serving in any of the capacities referred to in clause (i) hereof, served at the Association's request as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise; and (iii) any person nominated or designated by (or pursuant to authority granted by) the Board of Directors or any committee thereof to serve in any of the capacities referred to in clauses (i) or (ii) hereof.

(b) "Official Capacity" means (i) when used with respect to a director, the office of director of the Association, and (ii) when used with respect to a person other than a director, the elective or appointive office of the Association held by such person or the employment or agency relationship undertaken by such person on behalf of the Association, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

(c) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

Section 14.2. Indemnification. The Association shall indemnify every Indemnitee against all judgments, penalties (including excise and similar taxes), fines, amounts paid in settlement, and reasonable expenses actually incurred by the Indemnitee in connection with any Proceeding in which he was, is or is threatened to be named a defendant or respondent, or in which he was or is a witness without being named a defendant or respondent, by reason, in whole or in part, of his serving or having served, or having been nominated or designated to serve, in any of the capacities referred to in Section 14.1(a), if it is determined in accordance with Section 14.4 that the Indemnitee (i) conducted himself in good faith, (ii) reasonably believed, in the case of conduct in his Official Capacity, that his conduct was in the Association's best interests and, in all other cases, that his conduct was at least not opposed to the Association's best interests, and (iii) in the case of any criminal Proceeding, had no reasonable cause to believe that his conduct was unlawful; provided, however, that in the event that an Indemnitee is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the Indemnitee, the indemnification (i) is limited to reasonable expenses actually incurred by the Indemnitee in connection with the Proceeding and (ii) shall not be made in respect of any Proceeding in which the Indemnitee shall have been found liable for willful or intentional misconduct in the performance of his duty to the Association. Except as provided in the immediately preceding proviso to the first sentence of this Section 14.2, no indemnification shall be made under this Section 14.2 in respect of any Proceeding in which such Indemnitee shall have been (i) found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the Indemnitee's Official Capacity, or (ii) found liable to the Association. The termination of any Proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, is not of itself determinative that the Indemnitee did not meet the requirements set forth in clauses (i), (ii) or (iii) in the first sentence of this Section 14.2. An Indemnitee shall be deemed to have been found liable in respect of any claim, issue or matter only after the Indemnitee shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Reasonable expenses shall include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee.

Section 14.3. Successful Defense. Without limitation of Section 14.2 and in addition to the indemnification provided for in Section 14.2, the Association shall indemnify every Indemnitee against reasonable expenses incurred by such person in connection with any Proceeding in which he is a witness or a named defendant or respondent because he served in any of the capacities referred to in Section 14.1(a), if such person has been wholly successful, on the merits or otherwise, in defense of the Proceeding.

Section 14.4. Determinations. Any indemnification under Section 14.2 (unless ordered by a court of competent jurisdiction) shall be made by the Association only upon a determination that indemnification of the Indemnitee is proper in the circumstances because he has met the applicable standard of conduct. Such determination

shall be made (i) by the Board by a majority vote of a quorum consisting of directors who, at the time of such vote, are not named defendants or respondents in the Proceeding; (ii) if such a quorum cannot be obtained, then by a majority vote of all directors (in which designation directors who are named defendants or respondents in the Proceeding may participate), such committee to consist solely of two (2) or more directors who, at the time of the committee vote, are not named defendants or respondents in the Proceeding; (iii) by special legal counsel selected by the Board or a committee thereof by vote as set forth in clauses (i) or (ii) of this Section 14.4 or, if the requisite quorum of all of the directors cannot be obtained therefor and such committee cannot be established, by a majority vote of all of the directors (in which directors who are named defendants or respondents in the Proceeding may participate); or (iv) by the Members in a vote that excludes the directors who are named defendants or respondents in the Proceeding. Determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, determination as to reasonableness of expenses must be made in the manner specified in clause (iii) of the preceding sentence for the selection of special legal counsel. In the event a determination is made under this Section 14.4 that the Indemnitee has met the applicable standard of conduct as to some matters but not as to others, amounts to be indemnified may be reasonably prorated.

Section 14.5. Advancement of Expenses. Reasonable expenses (including court costs and attorneys' fees) incurred by an Indemnitee who was or is a witness or who is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by the Association at reasonable intervals in advance of the final disposition of such Proceeding, and without making any of the determinations specified in Section 14.4, after receipt by the Association of (i) a written affirmation by such Indemnitee of his good faith belief that he has met the standard of conduct necessary for indemnification by the Association under this Article XIV and (ii) a written undertaking by or on behalf of such Indemnitee to repay the amount paid or reimbursed by the Association if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this Article XIV. Such written undertaking shall be an unlimited obligation of the Indemnitee but need not be secured and it may be accepted without reference to financial ability to make repayment. Notwithstanding any other provision of this Article XIV, the Association may pay or reimburse expenses incurred by an Indemnitee in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not named a defendant or respondent in the Proceeding.

Section 14.6. Employee Benefit Plans. For purposes of this Article XIV, the Association shall be deemed to have requested an Indemnitee to serve an employee benefit plan whenever the performance by him of his duties to the Association also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall be deemed fines. Action taken or omitted by an Indemnitee with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Association.

Section 14.7. Other Indemnification and Insurance. The indemnification provided by this Article XIV shall (i) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under the Articles, any law, agreement or vote of Members or disinterested directors, or otherwise, or under any policy or policies of insurance purchased and maintained by the Association on behalf of any Indemnitee, both as to action in his Official Capacity and as to action in any other capacity, (ii) continue as to a person who has ceased to be in the capacity by reason of which he was an Indemnitee with respect to matters arising during the period he was in such capacity, and (iii) inure to the benefit of the heirs, executors, and administrators of such a person.

Section 14.8. Notice. Any indemnification of or advance of expenses to an Indemnitee in accordance with this Article shall be reported in writing to the Members with or before the notice or waiver of notice of the next meeting of the Members or with or before the next submission to the Members of a consent to action without a meeting and, in any case, within the twelve-month period immediately following the date of the indemnification or advance.

Section 14.9. Construction. The indemnification provided by this Article XIV shall be subject to all valid and applicable laws, including, without limitation, Article 2.02-1 of the Texas Business Association Act, and, in the event this Article XIV or any of the provisions hereof or the indemnification contemplated hereby are found to be

inconsistent with or contrary to any such valid laws, the latter shall be deemed to control and this Article XIV shall be regarded as modified accordingly, and, as so modified, to continue in full force and effect.

Section 14.10. Continuing Offer, Reliance, etc. The provisions of this Article XIV (i) are for the benefit of, and may be enforced by, each Indemnitee of the Association the same as if set forth in their entirety in a written instrument duly executed and delivered by the Association and such Indemnitee, and (ii) constitute a continuing offer to all present and future Indemnities. The Association, by its adoption of these Bylaws, (i) acknowledges and agrees that each Indemnitee of the Association has relied upon and will continue to rely upon the provisions of this Article XIV in becoming, and serving in any of the capacities referred to in Section 14.1(a) hereof, (ii) waives reliance upon, and all notices of acceptance of, such provisions by such Indemnities, and (iii) acknowledges and agrees that no present or future Indemnitee shall be prejudiced in his right to enforce the provisions of this Article XIV in accordance with their terms by any act or failure to act on the part of the Association.

Section 14.11. Effect of Amendment. No amendment, modification or repeal of this Article XIV or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnities to be indemnified by the Association, nor the obligation of the Association to indemnify any such Indemnities, under and in accordance with the provisions of this Article XIV as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

ARTICLE XV MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

12-22-1999 09:28 AM 1999158831
HAYWOODK \$27.00
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

DOC. NO.

90101934

FILM CODE

00004655563

MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

3:12 PM 8620

73.00 INDX
1 1 11/30/90
901019.34-DOC#
24.21-CHK#

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§
§

KNOW ALL MEN BY THESE PRESENTS:

This Master Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by Barton Creek Properties Inc., a Delaware corporation (the "Declarant") and is as follows:

WHEREAS, Declarant is the owner of certain real property located in Travis County, Texas more particularly described on Exhibit "A" attached hereto; and

WHEREAS, Declarant desires to develop (or cause to be developed) all or portions of the Property (as defined below) as part of a multi-use development consisting of: (i) development areas that will vary (from area to area) as to the use, size and types of development thereof and improvements constructed thereon; (ii) common areas improved by certain aesthetic and/or recreational amenities; and (iii) other improvements all of which shall exist for the benefit and use of the Owners (as defined below); and

WHEREAS, Declarant further desires and intends to provide for the maintenance of the Master Common Area (as defined below), which, pursuant to this Declaration, is to be maintained by all Owners; and

WHEREAS, to accomplish these objectives, Declarant may subject all or portions of the Property (and as provided below, additional properties now or hereafter owned by Declarant) to the covenants, conditions, restrictions, reservations, easements, servitudes, liens, charges and other terms provided herein;

WHEREAS, portions of the Property shall be made subject to this Declaration upon Declarant's filing of one or more notices of applicability pursuant to Section 10.05 below, and, once such notices of applicability have been filed pursuant to Section 10.05, the Property described therein shall constitute the Development (as defined below) and shall be governed by and fully subject to this Declaration, and the Development in turn shall be comprised of separate Development Areas (as defined below) which shall be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Declaration; and

WHEREAS, by the filing of this Declaration, Declarant serves notice that, upon the further filing of one or more notices of applicability pursuant to the requirements of Section 10.05 below, portions of the Property identified in such notice or notices shall be subjected to the terms and provisions of this Declaration.

L0599/0985/02GH23

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0707

NOW, THEREFORE, it is hereby declared (i) that those portions of the Property hereafter subjected to this Declaration pursuant to Section 10.05 below shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of such portions of the Property and which shall run with such portions of the Property and shall be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying those portions of the Property subjected to this Declaration pursuant to Section 10.05 below shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

"Articles" shall mean and refer to the Articles of Incorporation of the Master Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Assessment" or "Assessments" shall mean assessment(s), both regular and special, imposed by the Master Association under this Declaration.

"Assessment Unit" shall have the meaning set forth in Section 5.05.

"Board" shall mean the Board of Directors of the Master Association.

"Bylaws" shall mean and refer to the Bylaws of the Master Association as adopted and as amended from time to time.

"Commercial Lot" shall mean a portion of the Development shown as a subdivided lot on a Plat other than a Residential Lot, Master Common Area, or Special Common Area, that is intended and designated for business or commercial use. Business or commercial use shall include, but not be limited to, all office, retail, and wholesale activities, and shall also be deemed to include multi-family housing other than a condominium regime.

"Condominium Unit" shall mean an individual unit within a condominium regime established within the Development.

"Declarant" shall mean and refer to Barton Creek Properties Inc. a Delaware corporation, its successors or assigns; provided that any assignment(s) of the rights of Barton Creek Properties Inc., a Delaware corporation, as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

"Development" shall refer to any and all portions of the Property that are hereafter made subject to this Declaration pursuant to Section 10.05 of this Declaration.

"Development Area" shall mean any part of the Development (less than the whole) that is the subject of a Plat, which Development Areas may be subject to Development Area Declarations in addition to being subject to this Declaration.

"Development Area Association," as to each Development Area, shall mean the nonprofit corporation organized and established by Declarant to which, pursuant to the Development Area Declaration for such Development Area, are delegated the powers of owning, maintaining and administering the Special Common Areas, administering and enforcing the covenants and restrictions under, and collecting and disbursing the assessments and charges required by, such Development Area Declaration. Such Development Area Associations may take the form of a Property Owners Association, Commercial Property Owners Association, or Condominium Owners Association.

"Development Area Board of Directors" shall mean the Board of Directors of a Development Area Association.

"Development Area Declaration" shall mean, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

"Improvement" shall mean every structure and all appurtenances thereto of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Lot" shall mean and refer to a portion of the Development shown as a subdivided lot on a Plat other than Master Common Area or Special Common Area, and shall include both Commercial Lots and Residential Lots.

"Manager" shall have the meaning ascribed thereto in Section 3.04(I).

"Master Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Master Association" shall mean and refer to the Barton Creek Property Association, a Texas nonprofit corporation.

"Master Common Area" shall mean and refer to all real property, including Improvements located thereon, conveyed to the Master Association by plat dedication or otherwise and held for the benefit of the Owners, excluding only those areas within the Master Common Area dedicated to and accepted by any public authority. The Master Common Area shall include all areas within the Master Common Area that shall be or have been dedicated to all public authorities but not yet accepted by such authorities. The Master Common Area shall be owned by the Master Association for the common use and enjoyment of the Owners. Master Common Area may be designated by Declarant and dedicated or otherwise conveyed to the Master Association from time to time and at any time.

"Master Restrictions" shall mean the restrictions, covenants, and conditions contained in this Declaration, the Bylaws, or in any rules and regulations promulgated by the Master Association pursuant to this Declaration, as adopted and amended from time to time.

"Members" shall mean and refer to every person or entity who holds membership privileges in the Master Association.

"Membership Agreement" shall mean and refer to an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Declaration.

"Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

"Mortgagee" or "Mortgagees" shall mean the holder(s) of any Mortgage(s).

"Owner" shall mean the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit, but shall not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot or Condominium Unit pursuant to foreclosure of the lien of its Mortgage.

"Plat" shall mean a subdivision plat of any portion of the Development as recorded in the Plat Records of Travis County, Texas, and any amendments thereto.

"Property" shall mean all of that certain real property described in Exhibit A attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to Sections 10.03 and 10.04 of this Declaration.

"Residential Lot" shall mean and refer to a portion of the Development shown as a subdivided lot on a Plat, other than Master Common Area or Special Common Area, that is intended and designated solely for single-family residential use.

"Special Common Area" shall mean those portions of the Development designated by the Declarant as common area and dedicated to a Development Area Association by Plat or otherwise, including all Improvements located on such Special Common Area, excluding only those areas within a Special Common Area dedicated to and accepted by public authorities. A Special Common Area shall include, however, all areas within such Special Common Area that shall be or have been dedicated to one or more public authorities but not yet accepted by such public authorities. Special Common Area may be referred to simply as "Common Area" in the Development Area Declaration covering the Development Area within which such Special Common Area is located.

ARTICLE II

GENERAL RESTRICTIONS

2.01 General. All Lots and Condominium Units within the Development shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to any applicable conditions, restrictions, reservations, conditions and easements contained in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located.

2.02 Incorporation of Development Area Declarations. Upon recordation of a Development Area Declaration in the Travis County Real Property Records, such Development Area Declaration shall, automatically and without the necessity of further act, be incorporated into and be deemed to constitute a part of this Declaration, to the extent not in conflict with this Declaration, but shall apply only to the Development Area described in and covered by such Development Area Declaration. Regardless of any amendment or modification to a Development Area Declaration so incorporated in this Declaration by the members of the Development Area Association authorized and created by such Development Area Declaration, any such amendment or modification shall be effective, insofar as this Declaration is concerned, only with the written consent of the Board.

ARTICLE III

THE BARTON CREEK PROPERTY ASSOCIATION

3.01. Organization. The Master Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law, and set forth in its Articles of Incorporation and Bylaws and in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation, by provision thereof in Development Area Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Development Area Associations to own, develop, access, regulate, operate, maintain or manage portions of the Development subject to such Development Area Declarations.

3.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Master Association. Membership shall be appurtenant to and shall run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to said Lot or Condominium Unit.
- (b) Each Owner other than the Declarant must execute a Membership Agreement and deliver the same to the Master Association prior to or concurrently with the recording of a deed conveying fee title to a Lot or Condominium Unit to such Owner. Each Owner must notify the immediate transferee of his Lot or Condominium Unit of such transferee's obligation to so execute and deliver a Membership Agreement, but the failure to so notify a transferee shall not relieve such transferee of his obligations under this Section 3.02(b). The failure to execute a Membership Agreement shall not prevent any person from being a Member or Owner under the terms of the Articles, Bylaws or Master Restrictions, or excuse any Member from the payment of Assessments. An Owner who has not executed and delivered a Membership Agreement shall automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Master Common Area and applicable Special Common Area. Such Owner shall not be entitled to restoration of his voting privileges and rights in the Master Common Area or applicable Special Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member shall be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card

or other token evidencing or facilitating the right to use any Improvements erected or placed on the Master Common Area or Special Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

(c) Every Member shall have a right and easement of enjoyment in and to all of the Master Common Area and to the Special Common Area within the Development Area in which such Member's Lot or Condominium Unit is located, and an access easement by and through any Master Common Area and such Special Common Area, which easements shall be appurtenant to and shall pass with the title to such Member's Lot or Condominium Unit, subject to Section 3.02(b) above and subject to the following restrictions and reservations:

- (i) The right of the Master Association to suspend the Member's voting rights and right to use the Master Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Declaration;
- (ii) The right of the Master Association to dedicate or transfer all or any part of the Master Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be approved by a majority vote of the Members;
- (iii) The right of the Master Association to borrow money for the purpose of improving the Master Common Area and, in furtherance thereof, mortgage the Master Common Area;
- (iv) The right of the Master Association to make reasonable rules and regulations regarding the use of the Master Common Area and any Improvements thereon; and
- (v) The right of the Master Association to contract for services with third parties on such terms as the Master Association may determine.

3.03. Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- (a) The Owner of each Residential Lot shall have one (1) vote for each Residential Lot so owned. In the event of the resubdivision of any Residential Lot into two or more Residential Lots, the number of votes to which such Residential Lot is entitled shall be increased as necessary to

retain the ratio of one (1) vote for each Residential Lot resulting from such resubdivision. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single residence thereon, voting rights shall continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing herein shall be construed as authorization for any resubdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration.

- (b) Each Owner of Commercial Lot(s) and/or Condominium Unit(s) shall have the number of votes for each Commercial Lot and/or Condominium Unit so owned as determined by Declarant (or by the Board, as provided in Section 3.03(f)) at the time that a Development Area Declaration is first recorded in the Travis County Real Property Records for the Development Area within which such Commercial Lot or Condominium Unit is located. Declarant or the Board, as the case may be, shall determine such votes in its sole discretion, taking into account the relationship of such Commercial Lots and/or Condominium Units to the entire Development. Declarant's (or the Board's, as the case may be) determination regarding the number of votes to which such Owners shall be entitled shall be final, binding and conclusive, and shall be recorded in the Travis County Real Property Records. Such determination of Declarant (or the Board, as the case may be) may be set forth in the notice filed by Declarant pursuant to Section 10.05 below for the Development Area within which such Commercial Lot(s) or Condominium Unit(s) are located. Prior to the time any Lots or Condominium Units in such Development Area are conveyed by Declarant to any person not affiliated with Declarant, Declarant or the Board, as the case may be, may amend or modify its allocation of votes by filing an amended notice in the Travis County Real Property Records setting forth the amended allocation.
- (c) In addition to the votes to which Declarant is entitled by reason of Section 3.03(a) and Section 3.03(b), for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until the first time that Declarant owns no Property.
- (d) When more than one person or entity owns a portion of the fee simple interest in any Lot or Condominium Unit, all such persons or entities shall be Members. The vote or votes (or fraction thereof) for such Lot or Condominium Unit shall be exercised by the person so designated in the Membership Agreement relating to such Lot or Condominium Unit, and in no event shall the vote for such Lot or Condominium Unit exceed the total share vote to which such Lot or Condominium Unit is otherwise entitled under this Section 3.03.

(e) The right of any Owner to vote may be suspended by the Master Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) or Condominium Unit(s) remains past due, for any period during which such Owner or such Owner's Lot(s) or Condominium Unit(s) are in violation of this Declaration, and, as provided in Section 3.02(b) above, for any period during which such Owner has failed to execute and deliver a Membership Agreement.

(f) The right and obligation to determine votes allocated to Commercial Lots and Condominium Units shall be transferred automatically from the Declarant to the Board (without necessity of further act) at the first time that Declarant owns no Property.

3.04. Powers. The Master Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Master Association, shall have the following powers at all times:

- (A) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Master Association.
- (B) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Master Association's functions.
- (C) Records. To keep books and records of the Master Association's affairs, and to make such books and records, together with current copies of the Master Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (D) Assessments. To levy and collect assessments, and to determine Assessment Units, as provided in Article V below.
- (E) Right of Entry and Enforcement. To enter at any time, without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon or into any Condominium Unit for the purpose of enforcing the Master Restrictions or for the purpose of

maintaining or repairing any area, improvement or other facility to conform to this Declaration. The expense incurred by the Master Association in connection with the entry upon any Lot or into any Condominium Unit and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot or Condominium Unit so entered, shall be deemed a special Assessment against such Lot or Condominium Unit, shall be secured by a lien upon such Lot or Condominium Unit, and shall be enforced in the same manner and to the same extent as provided in Article V hereof for Assessments. The Master Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Master Restrictions. The Master Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Master Restrictions; provided, however, that the Board shall never be authorized to expend any Master Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Master Association may not alter or demolish any Improvements on any Lot other than Master Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Master Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. Each such Owner shall indemnify and hold harmless the Master Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Master Association's acts or activities under this Section 3.04(E) (including any cost, expense, liability, claim or cause of action arising out of the Master Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cost of action arising by reason of the Master Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Master Association.
- (G) Collection for Development Area Association. To collect on behalf of and for the account of any Development Area Association (but not to levy except as provided in Sections 3.04(O) and (P)) any assessment made by a Development Area Association.
- (H) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates.

easements, rights-of-way or mortgages, out of, in, on, over, or under any Master Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (a) Parks, parkways or other recreational facilities or structures;
- (b) Roads, streets, street lights, walks, driveways, trails and paths;
- (c) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (e) Any similar improvements or facilities.

Nothing set forth above, however, shall be construed to permit use or occupancy of any improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed thereon by the Master Restrictions or by any governmental authority.

- (I) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Master Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Master Association or may be furnished by the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. The Members of the Master Association hereby release the Master Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (J) Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Master Association, including but not limited to its recreational facilities; to maintain and repair recreational facilities, easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes located within the Master Common Area, and to maintain and repair other portions of the Master Common Area.
- (K) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Master Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Master Restrictions.
- (L) Construction on Master Association Property. To construct new improvements or additions to any property owned by the Master.

Association, subject to the approval of the Master Architectural Committee.

- (M) Contracts. To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any Master Common Area or to provide any service or perform any function on behalf of Declarant, the Board or the Master Association.
- (N) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (O) Authority with Respect to Development Area Association. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any Development Area Declaration, if in the judgment of the Board, the Development Area Association responsible for such implementation, administration or enforcement is failing to do so; provided, however, that the foregoing powers shall not be exercised by the Board until it has given such Development Area Association written notice of such failure and an opportunity to cure the same within thirty (30) days of the delivery of such notice, unless the Board determines, in its sole discretion, that a shorter time period is necessary to prevent undue loss or damage; and all costs and expenses incurred by the Master Association pursuant to or permitted by this Section 3.04(O) may at the option of the Board be charged to the related Development Area Association and the Master Association may declare a special Assessment under the related Development Area Declaration, which Assessment shall be enforced by the related Development Area Association or by the Master Association pursuant to such Development Area Declaration. Any decision by the Master Association to delay or defer the exercise of the power and authority granted by this Section 3.04(O) shall not subsequently in any way limit, impair or affect ability of the Master Association to exercise such power and authority.
- (P) Manager for Development Area Association. To employ from time to time a managing agent to administer a Development Area Association's affairs, if, in the judgment of the Board, a Development Area Association is failing to carry out its responsibilities set forth in its Development Area Declaration; provided, however, that this power shall not be exercised by the Board until it has given such Development Area Association written notice of such failure and an opportunity to cure the same within thirty (30) days of its receipt of such notice, unless the Board determines, in its sole discretion, that a shorter time period is necessary to prevent undue loss or damage; and all costs and expenses incurred by the Master Association pursuant to or permitted by this Section 3.04(P) may at the option of the Board be charged to the related Development Area Association and the Master Association may declare a special Assessment under the related Development Area Declaration, which Assessment shall be enforced by the

related Development Area Association or by the Master Association pursuant to such Development Area Declaration. The duration of the employment of the managing agent employed by the Board for a Development Area pursuant to this Paragraph shall extend until such time as the Board reasonably determines the applicable Development Area Association will carry out its responsibilities as set forth in the applicable Development Area Declaration.

- (Q) Allocation of Votes. To determine votes as provided in Section 3.03 above.
- (R) Membership Privileges. To establish rules and regulations governing and limiting the use of the Master Common Area and any Improvements thereon.

3.05. Maintenance. The Master Association shall (i) maintain, repair and replace as necessary all landscaping, irrigation systems, entrance signs, traffic signs, and other Improvements (other than actual roadways that have been accepted for maintenance by the appropriate governmental authority) within any right-of-way that is within or adjacent to the Development and that constitutes a portion of the Master Common Area; and (ii) maintain all Master Common Area dedicated to the Master Association for maintenance, by or with the consent of Declarant.

3.06. Street Lighting. The Master Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain any street lights that have not been accepted by any governmental entity for operation and maintenance and that are located within any right-of-way within, adjacent to, or serving the Development.

3.07. Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Master Association, the Master Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Master Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Master Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Master Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Master Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Master Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE IV

INSURANCE

4.01 Insurance. Each Owner shall be required to purchase and maintain insurance on the Improvements located upon such Owner's Lot, or on such Owner's Condominium Unit, as set forth in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.01. Assessments.

- (A) Assessments established by the Board pursuant to the provisions of this Article III shall be levied against each Lot and Condominium Unit in amounts determined pursuant to Section 5.05 below. The total amount of Assessments shall be determined by the Board pursuant to Section 5.03 and/or 5.04 hereof.
- (B) Each Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied, and shall be secured by a lien hereby granted and conveyed by the Declarant to the Association against each such Lot, and all Improvements thereon, and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Master Association may enforce payment of such Assessments in accordance with the provisions of this Article.

5.02. Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Master Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Master Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment of other maintenance

funds by a Development Area Association pursuant to any Development Area Declaration.

5.03. Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Master Association during such year in performing its functions under this Declaration, including, but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and shall estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and shall give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Master Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Master Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04. Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Master Association under this Declaration. The amount of any special Assessments shall be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Master Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Common Area.

5.05 Amount of Assessment.

A. The Board shall levy Assessments on a ratable basis against each "Assessment Unit" (as defined in Section 5.05(B) below).

B. Each Residential Lot shall constitute one "Assessment Unit." Each Commercial Lot and each Condominium Unit shall constitute that number of "Assessment Units" as determined by Declarant (or, as provided in Section 5.05(E), the Board) at the time that the Development Area Declaration is first recorded in the Travis County Real Property Records for the Development Area within which such Commercial Lot or Condominium Unit is located. Declarant (or the Board, as the case may be) shall determine such Assessment Unit in its sole and absolute discretion, taking into account the relationship of such Commercial Lots and/or Condominium Units to the entire Development. Declarant's (or the Board's, as the case may be) determination regarding the number of Assessment Units applicable to each Commercial Lot or Condominium

Unit shall be final, binding and conclusive, and shall be recorded in the Travis County Real Property Records. Such determination of Declarant (or the Board, as the case may be) may be set forth in the notice filed by Declarant pursuant to Section 10.05 for the Development Area within which such Commercial Lot(s) or Condominium Unit(s) are located.

C. Prior to the time any Lots or Condominium Units in such Development Area are conveyed to any person not affiliated with Declarant, Declarant or the Board, as the case may be, may modify its determination regarding the allocation of Assessment Units by filing an amended notice in the Real Property Records of Travis County, Texas setting forth the amended allocation.

D. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots or Condominium Units owned by Declarant without the consent of Declarant.

E. The right and obligation to determine Assessment Units for Commercial Lots and Condominium Units shall be transferred automatically from the Declarant to the Board (without necessity of further act) at the first time that Declarant owns no Property.

5.06. Late Charges. If any Assessment, whether regular or special, is not paid by the due date applicable thereto, the Owner responsible for the payment thereof may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate from time to time, and the late charge (and any reasonable handling costs therefor) shall be a charge upon the Lot(s) or Condominium Unit(s) owned by such Owner, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s) or Condominium Unit(s) heretofore granted; provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

5.07. Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein shall be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

5.08. Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with interest as provided in Section 5.07 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Master Association

U
pursuant to Section 5.01(B) above, and shall bind each Lot or Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against such Lot or Condominium Unit, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas before the delinquent Assessment was due. The Master Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board, and such subordination may be signed by an officer of the Master Association. The Master Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by one of the officers of the Master Association and shall be recorded in the Travis County Real Property Records. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Declaration, shall be deemed conclusively to have granted a power of sale to the Master Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot or Condominium Unit by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Barry Allison of Travis County, Texas is hereby designated as trustee for the benefit of the Master Association, with the Master Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Master Association may have by law and under this Declaration, including the rights of the Master Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or nonjudicial, such Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property 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, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot or Condominium Unit, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first-lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale)

from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 5.08, the Master Association shall upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Master Association has already foreclosed such lien. Such release shall be signed by an officer of the Master Association.

5.09. Exempt Property. The following area within the Development shall be exempt from the Assessments provided for in this Article:

(a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Real Property Records of Travis County, Texas; and

(b) The Master Common Area and the Special Common Area.

ARTICLE VI

MASTER ARCHITECTURAL CONTROL COMMITTEE

6.01. Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be resubdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Master Architectural Committee.

6.02. Master Architectural Committee.

(a) Composition. The Master Architectural Committee shall be composed of three (3) persons appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause) all members of the Master Architectural Committee. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board shall have the right to appoint and remove all members of the Master Architectural Committee. At the first time at which Declarant owns no Property, the power to appoint and remove members of the Master Architectural Committee shall automatically be vested in the Board.

(b) Submission and Approval of Plans and Specifications. Two (2) copies of the construction plans and specifications (including but not limited to exterior views, exterior materials, colors and elevation, a drainage plan, a site plan showing the location of any proposed structure or improvement, a landscaping plan, and a driveway construction plan) or, when an Owner desires solely to resubdivide or consolidate Lots, a proposal in the form required by the Master Architectural Committee, and any other information or documents that may be required by the Master Architectural Committee, shall be delivered, together with any review fee which is imposed by the Master

Architectural Committee in accordance with Section 6.02(c) to the Master Architectural Committee at the offices of Declarant, 8212 Barton Club Drive, Penthouse of the Spa Building, Austin, Texas 78735, or such other address as may hereafter be designated in writing from time to time, not less than thirty (30) days prior to the date on which the Owner proposes to commence construction or resubdivision/consolidation. No resubdivision or consolidation shall be made, nor any Improvement placed or altered on any Lot, until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Master Architectural Committee. The Master Architectural Committee may, in reviewing such plans and specifications, consider any information that it deems proper, including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Master Architectural Committee or any other entity; information relating to the question of whether any proposed Improvement would unreasonably obstruct the view from the Development or neighboring Lots; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The decisions and determinations of the Master Architectural Committee shall be made in recognition of the Declarant's intent that the exterior of all residences or structures on Residential Lots be constructed of the same types of materials, that such residences or structures be of the same general style, and that any commercial structures or multi-family housing structures be harmonious with the surrounding area and the Development as a whole. The Master Architectural Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Master Architectural Committee, in its sole discretion, may require. A copy of the construction plans and specifications and a site plan showing the location of the proposed structure or Improvement, if approved, shall remain in the possession of the Master Architectural Committee until the Development is built out in its entirety. Site plans must be approved by the Master Architectural Committee prior to the clearing of any Lot, or the construction of any Improvements thereon. The Master Architectural Committee may refuse to approve plans and specifications for proposed Improvements, or for the resubdivision or consolidation of any Lots, on any grounds that, in the sole and absolute discretion of the Master Architectural Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Adoption of Rules and Regulations. The Master Architectural Committee shall have the authority to adopt such procedural and substantive rules and guidelines (including without limitation the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder, including rules and guidelines establishing and describing its review procedures, and principles and criteria used in its review. The Master Architectural Committee may amend or modify or supplement its rules and guidelines from time to time as the Master Architectural Committee deems advisable. In addition, the Master Architectural Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall

be held by the Master Architectural Committee and used to defray the administrative expenses incurred by the Master Architectural Committee in performing its duties hereunder; provided, however, that any excess funds held by the Master Architectural Committee shall be distributed to the Maaster Association at the end of each calendar year

(d) Actions of the Master Architectural Committee. The Master Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Master Architectural Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Master Architectural Committee taken at a duly constituted meeting shall constitute an act of the Master Architectural Committee.

(e) Failure to Act. In the event that any plans and specifications are submitted to the Master Architectural Committee as provided herein, and the Master Architectural Committee shall fail either to approve or reject such plans and specifications for a period of twenty-one (21) days following such submission, no approval by the Master Architectural Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such twenty-one (21) day period shall not begin to run until all information required to be submitted by the Master Architectural Committee to assist in its review of any plans or specifications has been received by the Master Architectural Committee. Any failure of the Master Architectural Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Master Architectural Committee's written approval of all requests for variances shall be expressly required.

(f) Variances. The Master Architectural Committee may grant variances from compliance with any of the provisions of this Declaration or any supplemental declaration hereinafter placed of record, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Master Architectural Committee, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Development, and such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Master Architectural Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any supplemental declaration for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

(g) Duration of Approval. The approval of the Master Architectural Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Master Architectural Committee shall be valid for a period of 90 days only. If construction in accordance with such plans and specifications or variance is not commenced within such 90-day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Master Architectural Committee, and the Master Architectural Committee shall have the authority to re-evaluate such plans and specifications in accordance with this Section and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval thereof.

(h) No Waiver of Future Approvals. The approval of the Master Architectural Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Master Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications, or any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Master Architectural Committee.

(i) Non-liability of Committee Members. Neither the Master Architectural Committee, nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Master Architectural Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Master Architectural Committee or one or more of its members, as the case may be.

(j) Relationship with Architectural Committees Established Under Development Area Declarations. At its option, the Master Architectural Committee may, from time to time and at any time, assume, enjoy, exercise and discharge all rights, privileges, powers and duties of any architectural committee established under any Development Area Declaration, which option may be exercised by the Master Architectural Committee, in its sole discretion, by delivery of written notice to such architectural committee, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate. In addition, and without in any way limiting, impairing or affecting the ability of the Master Architectural Committee subsequently to exercise the authority granted by the preceding sentence, any architectural committee established for a Development Area may delegate its powers and authority to the Master Architectural Committee, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate. If the Master Architectural Committee exercises its right and option to assume and enjoy the rights, privileges, powers and duties of any architectural committee for a Development Area, or if any such architectural committee for a Development Area designates the Master Architectural Committee to enjoy and exercise such rights, privileges, powers and duties, the Master Architectural Committee shall have all of the rights, privileges, powers and

duties granted to such architectural committee by the pertinent Development Area Declaration, and shall have such enjoyment and exercise exclusively until such time as the Master Architectural Committee notifies such Development Area architectural committee in writing that the Master Architectural Committee is abandoning such rights, privileges, powers and duties, it being expressly understood that in such event the Master Architectural Committee shall retain the right to assume or accept a delegation of such rights, privileges, powers or duties at a later date. In addition, the Master Architectural Committee may, from time to time and at any time, delegate to any architectural committee for a Development Area any right or duty of the Master Architectural Committee hereunder, to the extent that the same relates to such Development Area, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate.

ARTICLE VII

MORTGAGE PROTECTION

7.01. Notice to Master Association. An Owner who mortgages such Owner's Condominium Unit or Lot shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board shall maintain such information in a book entitled "Mortgagees of Owners".

7.02. Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03. Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and Condominium Units and not to any other portion of the Property.

ARTICLE VIII

GENERAL PROVISIONS

8.01. Term. Upon the filing of a notice pursuant to Section 10.05, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Master Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Real Property Records of Travis County, Texas, and continuing through and including January 1, 2020, after which time this Declaration shall be automatically extended for successive periods of five (5) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by

Members entitled to cast at least seventy percent (70%) of the total number of votes of the Master Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Real Property Records of Travis County, Texas.

8.02. Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Master Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board (and, if desired by the taking authority, the board of directors of the Development Area Association whose Special Common Area is subject to such acquisition) need be made a party, and in any event the proceeds received shall be held by the Master Association for the benefit of the Owners. In the event any proceeds are paid to Owners, such payments shall be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lots or Condominium Units.

8.03. Amendment. This Declaration may be amended or terminated by the recording in the Real Property Records of Travis County, Texas, of 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 votes entitled to be cast by members of the Master Association.

8.04. Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Master Association or a Development Area Association, or areas conveyed to the Master Association or a Development Area Association, or areas reserved as Master Common Area or Special Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

8.05. Enforcement. The Master Association or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

8.06. Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity

of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.07. Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, or any Development Area Declaration or documents creating, governing, or adopted by any Development Area Association, the provisions of this Declaration shall govern.

8.08. Gender. Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

8.09. Acceptance by Grantees. Each grantee of Declarant of a Lot, Condominium Unit or other real property interest in the Development, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall constitute covenants running with the land within the Development, and shall bind any person having at any time any interest or estate in the Development, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

8.10. Damage and Destruction

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Master Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section 8.10(a), means repairing or restoring the Master Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Master Common Area shall be repaired unless a majority of the Board shall decide within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Master Association within said period, then the period shall be extended until such information shall be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Master Common Area shall not be repaired and no alternative improvements are authorized, then the affected portion of the Master

Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Master Common Area by the Master Association in a neat and attractive condition.

(d) If the damage or destruction for which the insurance proceeds are paid is to be repaired, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special Assessment against all Owners as provided in Article V. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

8.11. No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Master Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development in question has been removed from the provisions of this Declaration pursuant to Section 10.04 below. This Section 8.11 shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

8.12. Notices. Any notice permitted or required to be given to any person by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Master Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Master Association.

ARTICLE IX

EASEMENTS

9.01. Right of Ingress and Egress. Declarant, its agents and employees shall have a right of ingress and egress over and the right of access to the Master Common Area to the extent necessary to use the Master Common Area and the right to such other temporary uses of the Master Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Development.

9.02. Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Development becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Development.

ARTICLE X DEVELOPMENT RIGHTS

10.01. Development by Declarant. It is contemplated that the Development will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to designate Development Areas, to create Lots, Special Common Areas and Master Common Areas and to subdivide with respect to any of the Development pursuant to the terms of this Section 10.01, subject to any limitations imposed on portions of the Development by any applicable Plats. These rights may be exercised with respect to any portions of the Property at any time and from time to time. As each area is developed or dedicated, Declarant may record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may, but need not, provide for the establishment of a Development Area Association to be comprised of Owners within the area subject thereto. Any Development Area Declaration may provide its own procedure for the amendment of any provisions thereof. All lands, improvements, and uses in each area so developed shall be subject to both this Declaration and the Development Area Declaration, if any, for that Area.

10.02. Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times and from time to time, during the time that Declarant owns any Lot or Condominium Unit in any portion of the Development, Declarant shall have the right and privilege upon approval of the Master Architectural Committee (i) to erect and maintain advertising signs (illuminated or nonilluminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development, (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices, and (iii) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself

to conduct the activities enumerated in this Section 10.02 until all present and future Lots in the Development have been completed and conveyed to third parties.

10.03. Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land as hereinafter described, such land shall be considered part of the Property for purposes of this Declaration, and upon the further filing of a notice of applicability meeting the requirements of Section 10.05 below, such added lands shall be considered part of the Development subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such 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 such land shall be considered Property for purposes of this Declaration, and that upon the further filing of a notice of applicability meeting the requirements of Section 10.05 of this Declaration, all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land;
- (C) A legal description of the added land; and
- (D) A legal description of all Master Common Area to be owned by the Master Association within the added land as of the date of such addition.

10.04. Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Declaration and the jurisdiction of the Master Association (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property or Development included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property or Development included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and removal, 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.

10.05. Notice of Applicability. Upon the filing hereof, this Declaration serves to provide notice that at any time and from time to time all or portions of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration shall apply to and burden portion or portions of the Property upon the filing of a notice of applicability describing such Property by legally sufficient description and expressly providing that such Property shall be considered a part of the Development and shall be subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. Each time that Declarant causes a Development Area Declaration to be recorded covering a portion of the Property that constitutes a Development Area, Declarant may cause a notice of applicability of this Declaration to be filed in the Real Property Records of Travis County, Texas (which notice may be contained within the Development Area Declaration for such Development Area) and immediately upon the filing of such notice, such Property constituting a Development Area shall be burdened by and subject to all of the terms, covenants, conditions, restrictions and obligations set forth herein. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant shall be required only to cause a notice of applicability to be recorded containing the following provisions:

(A) A reference to this Declaration, which reference shall state the volume and initial page number of the Real Property Records of Travis County, Texas wherein this Declaration is recorded;

(B) A statement that all of the provisions of this Declaration shall apply to such portion of the Property;

(C) A legal description of such portion of the Property; and

(D) A legal description of any Master Common Area to be located within such portion of the Property.

EXECUTED by the undersigned on the date set forth hereinbelow.

DECLARANT:

BARTON CREEK PROPERTIES INC.
a Delaware corporation

By: EC

Printed Name: E. E. Howard, III

Title: Vice President

Date: November 28, 1990

STATE OF LOUISIANA §

PARISH OF ORLEANS §

This instrument was acknowledged before me on this 28th day of
November, 1990 by E. E. Howard, III
Vice President of Barton Creek Properties Inc., a Delaware
corporation, on behalf of said corporation.

Brainerd S. Montgomery
Notary Public, State of Louisiana

Name Printed: Brainerd S. Montgomery

Commission Expires: At Death

CONSENT OF MORTGAGEE

FMI Credit Corporation, a Delaware corporation, the owner and holder of one or more liens against the Property evidenced by instrument of records in the Real Property Records of Travis County, Texas, as such instruments may have been heretofore amended and/or supplemented, hereby joins in the execution of this Declaration for the purpose of evidencing its consent hereto and hereby subordinates all liens held by it against the Property to the terms of this Declaration. Nothing in this Declaration will constitute a default under any indebtedness owed to the undersigned or any instrument securing the payment thereof.

FMI Credit Corporation

By: EC
Name: E. E. Howard, III
Title: Vice President
Date: November 28, 1990

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

Before me, the undersigned authority, on this day personally appeared E. E. Howard, III, Vice President, of FMI Credit Corporation, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Brainerd S. Montgomery
Notary Public, State of Louisiana

Name Printed: Brainerd S. Montgomery

Commission Expires At Death

L0599/0985/02GH19

-30-

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0736

EXHIBIT "A"
TO MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

1. Those certain 205.015 acre and 328.134 acre tracts of land described in a Special Warranty Deed with Vendor's Lien dated August 31, 1988, from Texas Commerce Bank, Austin, National Association, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 20, 1988, in Volume 10778, Page 0764 of the Real Property Records of Travis County, Texas.
2. Those certain 838.957 acre and 30.029 acre tracts of land described in a General Warranty Deed with Vendor's Lien dated April 28, 1989, from Edmond A. Henderson and wife, Mary Catherine Henderson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on April 28, 1989, in Volume 10927, Page 0616 of the Real Property Records of Travis County, Texas.
3. Those certain 237.95 acre and 12.67 acre tracts of land described in a Special Warranty Deed with Vendor's Lien dated December 22, 1988, from First Interstate Bank of Texas, N.A., a national banking association, formerly known as First Interstate Bank of Beaumont, N.A., formerly known as Allied Bank Beaumont, N.A., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 29, 1988, in Volume 10845, Page 0595 of the Real Property Records of Travis County, Texas.
4. That certain 37.1105 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 21, 1988, from Kathleen Ruth Marshall, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 21, 1988, in Volume 10841, Page 0544 of the Real Property Records of Travis County, Texas.
5. That certain 36.954 acre tract of land described in a Warranty Deed with Vendor's Lien dated May 1, 1989, from Edwin M. Knight, III and Luellen Knight, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on May 1, 1989, in Volume 10928, Page 0652 of the Real Property Records of Travis County, Texas.
6. That certain 36.162 acre tract of land described in a Special Warranty Deed dated August 26, 1988, from the Federal Deposit Insurance Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 6, 1988, in Volume 10768, Page 1513 of the Real Property Records of Travis County, Texas.

7. That certain 2.0432 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 22, 1989, from Gray Byron Jolink and wife, Katherine C. Jolink, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 24, 1989, in Volume 10882, Page 0001 of the Real Property Records of Travis County, Texas.
8. That certain 43.364 acre tract of land described in a Warranty Deed with Vendor's Lien dated March 6, 1989, from Song Moo Shim and wife, Junghee Shim, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 6, 1989, in Volume 10888, Page 0515 of the Real Property Records of Travis County, Texas.
9. Those certain 5.005 acre and 32.596 acre tracts of land described in a Warranty Deed with Vendor's Lien dated February 28, 1989, from Juan Antonio Santoscoy Cobo, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 3, 1989, in Volume 10887, Page 1098 of the Real Property Records of Travis County, Texas.
10. That certain 2.1768 acre tract of land described in a Warranty Deed with Vendor's Lien dated April 19, 1989, from Roland V. Worrell and wife, Lena J. Worrell, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on April 19, 1989, in Volume 10920, Page 0248 of the Real Property Records of Travis County, Texas.
11. That certain 9.6730 acre tract of land described in a Warranty Deed dated December 2, 1988, from Roland V. Worrell and Lena J. Worrell, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0469 of the Real Property Records of Travis County, Texas.
12. That certain 9.6021 acre tract of land described in a Warranty Deed dated January 10, 1989, from Herman Marx and wife, Ilois R. Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 10, 1989, in Volume 10852, Page 0087 of the Real Property Records of Travis County, Texas.
13. That certain 9.6186 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 20, 1988, from Ernest Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 20, 1988, in Volume 10840, Page 0689 of the Real Property Records of Travis County, Texas; SAVE AND EXCEPT that certain 0.427 acre tract of land described in a Special Warranty Deed dated January 5, 1990, effective January 25, 1990, from Barton Creek Properties Inc., Grantor, to Dan Reese, Grantee, and recorded on January 25, 1990, in Volume 11110, Page 0032 of the Real Property Records of Travis County, Texas, and SAVE AND EXCEPT the portion of such 9.6186 acre tract of land located within Lot 1 of the Estates Above Lost Creek, Section Two, a subdivision in Travis County, according to the map or plat thereof recorded in Volume 88, Page 0359, Plat Records of Travis County, Texas.

L0598/1421/01UT04

2 of 6

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0738

14. That certain 9.6440 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 3, 1989, from Lester Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 3, 1989, in Volume 10869, Page 0604 of the Real Property Records of Travis County, Texas; SAVE AND EXCEPT the portion thereof located within Lot 1 of the Estates Above Lost Creek, Section Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 88, Page 0359, Plat Records of Travis County, Texas, and SAVE AND EXCEPT that certain 1.01 acre tract of land described in a Special Warranty Deed with Declaration of Covenants, Conditions, and Restrictions dated July 17, 1990, effective July 20, 1990, from Barton Creek Properties Inc., Grantor, to Stephen E. Dehan and Alison G. Dehan, Grantee, and recorded on July 20, 1990, in Volume 11233, Page 1292 of the Real Property Records of Travis County, Texas.
15. That certain 9.2007 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 24, 1989, from St. Gregory's Orthodox Christian Church, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 24, 1989, in Volume 10882, Page 0590 of the Real Property Records of Travis County, Texas.
16. That certain 7.2266 acre tract of land as described in a Warranty Deed with Vendor's Lien dated December 14, 1988, from Emil Marx, Jr., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 14, 1988, in Volume 10836, Page 0327 of the Real Property Records of Travis County, Texas.
17. That certain 9.6358 acre tract of land described in a Warranty Deed dated December 2, 1988, from Leona Anderson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0478 of the Real Property Records of Travis County, Texas.
18. That certain 9.6332 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 14, 1989, from Herman Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 14, 1989, in Volume 10875, Page 0343 of the Real Property Records of Travis County, Texas.
19. That certain 9.6348 acre tract of land described in a General Warranty Deed with Vendor's Lien dated January 23, 1989, from Emma Lee Johnson, formerly Emma Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 23, 1989, in Volume 10860, Page 0543 of the Real Property Records of Travis County, Texas.

20. That certain 9.584 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 2, 1988, from Wilburn Hermon Simpson (also known as Wilbur Hermon Simpson) and wife, Shirley Jean Simpson, Calvin Wesley Simpson and wife, Dolores Hope Simpson, Jimmy Ray Simpson and wife, Nancy Joann Simpson, and Floyd Earl Simpson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0459 of the Real Property Records of Travis County, Texas.
21. Those certain 30.025 acre and 0.139 acre tracts of land described in a Warranty Deed with Vendor's Lien dated January 23, 1989, from Evan Hintner, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 23, 1989, in Volume 10860, Page 0560 of the Real Property Records of Travis County, Texas.
22. That certain 15.962 acre tract of land described in a Warranty Deed with Vendor's Lien dated January 11, 1989, from Jonathan Clare Stupka, also known as John Stupka, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 11, 1989, in Volume 10853, Page 0619 of the Real Property Records of Travis County, Texas.
23. That certain 4.432 acre tract of land described in a Warranty Deed with Vendor's Lien dated January 31, 1989, effective as of February 23, 1989, from Robert Lynn Livingston and Iris Lynn Livingston, husband and wife, Channel Associates, a Texas general partnership comprised of John S. Rowley and Mike F. Rowley, and Diane Rowley, as her separate property, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 23, 1989, in Volume 10881, Page 0559 of the Real Property Records of Travis County, Texas.
24. That certain 2.437 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 14, 1988, from Stephen L. Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 14, 1988, in Volume 10836, Page 0319 of the Real Property Records of Travis County, Texas.
25. That certain 201.31 acre tract of land described in a Warranty Deed dated September 26, 1988, from Fennessey Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 27, 1988, in Volume 10783, Page 0448 of the Real Property Records of Travis County, Texas.
26. Those certain 30.997 acre and 38.311 acre tracts of land described in a Special Warranty Deed dated August 25, 1988, from Belmont Joint Venture, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 7, 1988, in Volume 10769, Page 1255 of the Real Property Records of Travis County, Texas.
27. That certain 100.087 acre tract of land described in a Warranty Deed dated August 25, 1988, from Rathgeber Family Partnership, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 29, 1988, in Volume 10763, Page 0151 of the Real Property Records of Travis County, Texas.

L0598/1421/01UI04

4 of 6

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0740

28. That certain 992.199 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated August 25, 1988, from Estates of Barton Creek I, Grantor, to Barton Creek Properties Inc., Grantee, and recorded in Volume 10762, Page 0517 of the Real Property Records of Travis County, Texas, and that certain 211.701 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated September 20, 1988, from Barton Creek Club Joint Venture, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 20, 1988, in Volume 10778, Page 0840 of the Real Property Records of Travis County, Texas, ~~SAVE AND EXCEPT~~ that certain 200.388 acre tract of land described in a General Warranty Deed with Vendor's Lien dated December 20, 1988, from Barton Creek Properties Inc., Grantor, to Barton Creek Club, Inc., Grantee, and recorded on December 21, 1988, in Volume 10841, Page 0185 of the Real Property Records of Travis County, Texas.
29. That certain Lot 125, Block A, of Rob Roy on the Creek, Section Seven, and that certain Lot 126, Block A of Rob Roy on the Creek, Section 3, an addition in Travis County, Texas, as further described in a Special Warranty Deed with Vendor's Lien dated August 25, 1988, from Community Investment Properties, Inc., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 26, 1988, in Volume 10762, Page 0514 of the Real Property Records of Travis County, Texas.
30. Those certain 71.053 acre and 24.576 acre tracts of land described in a Warranty Deed with Vendor's Lien dated October 17, 1989, effective October 18, 1989, from Realtex Funding Corp., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on October 20, 1989, in Volume 11048, Page 0401 of the Real Property Records of Travis County, Texas.
31. That certain 61.9912 acre tract of land described in a General Warranty Deed with Vendor's Lien dated July 19, 1989, from Richard L. Bowen and wife, Diane Ruth Bowen, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on July 19, 1989, in Volume 10982, Page 0761 of the Real Property Records of Travis County, Texas.
32. That certain 37.746 acre tract of land described in a General Warranty Deed with Vendor's Lien dated October 10, 1989, from John D. Perkins, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on October 10, 1989, in Volume 11040, Page 0849 of the Real Property Records of Travis County, Texas.
33. That certain 4.8789 acre tract of land described in a General Warranty Deed with Vendor's Lien dated March 7, 1990, from Truman D. Sullivent and Barbara Ann Sullivent, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 8, 1990, in Volume 11139, Page 0979 of the Real Property Records of Travis County, Texas.

34. That certain 4.7714 acre tract of land described in a General Warranty Deed with Vendor's Lien dated March 7, 1990, from Robert B. Tyler and Edith Mae Tyler, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 8, 1990, in Volume 11139, Page 0996 of the Real Property Records of Travis County, Texas.
35. Those certain 8.317 acre and 3.989 acre tracts of land described in a General Warranty Deed with Vendor's Lien dated November 20, 1989, from Wilson Development Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on November 20, 1989, in Volume 11068, Page 0395 of the Real Property Records of Travis County, Texas.
36. That certain 88.073 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated August 16, 1990, from Franklin Federal Bancorp, a Federal Savings Bank, transferee of The Federal Savings and Loan Insurance Corporation, as Receiver for Great West Savings Banc, a Texas savings and loan association, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 17, 1990, in Volume 11253, Page 0709 of the Real Property Records of Travis County, Texas.
37. That certain 19.00 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated June 19, 1990, from the Federal Deposit Insurance Corporation, as Manager of the ESIC Resolution Fund, as Successor to the Federal Savings and Loan Insurance Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on June 22, 1990, in Volume 11214, Page 1077 of the Real Property 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

NOV 30 1990



Karen M. Sanders
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED

Nov 30 3 02 PM '90

DAN LEBLANC
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Ref. to
Commercial Title
1411 West Ave
Austin, TX 78701

L0598/1421/01UT04

6 of 6

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0742

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 26th 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:

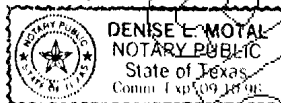
FM PROPERTIES OPERATING CO.,
a Delaware general partnership

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.



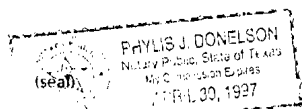
(seal)

Denise L. Motal
Notary Public Signature

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

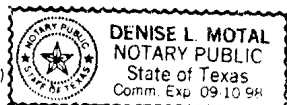
This instrument was acknowledged before me on February 26, 1997, by Angie Thielemans, Secretary of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



THE STATE OF TEXAS §

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.



(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

1788
00005086419
00005086419

**SECOND AMENDMENT TO MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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

This Second Amendment to Master Declaration of Covenants, Conditions and Restrictions (the "Second Amendment") is made by **BARTON CREEK PROPERTY 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. The Master Declaration was amended by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions recorded in Volume 11706, Page 726, of the Real Property Records of Travis County, Texas (the "First Amendment").

D. 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.

E. The following amendments have been approved by Declarant as the Owner of Lots within the Development and 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.

12369.3/SP/XSS/1521/011094

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12110 1340

F. 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 (i) 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, and (ii) the Declarant:

1. Article VIII of the Master Declaration shall be amended by adding the following:

8.13 Right of First Refusal.

(a) Preferential Right. All Lots owned by the Declarant as of or subsequent to the date of this Second Amendment are hereby encumbered with a continuing right of first refusal to purchase (the "Right of First Refusal") in favor of Declarant. In the event an Owner shall receive a bona fide final written offer ("Offer") from a third party to purchase all or any part of a Lot or Lots subject to the Right of First Refusal, the Owner shall promptly deliver written notice ("Offer Notice") to the Declarant of the terms and the conditions of the Offer together with a copy of the final negotiated contract ("Purchase Contract") evidencing the Offer and allow Declarant five days after receipt by Declarant of the Offer Notice and Purchase Contract to accept or reject the Offer. If Declarant does not accept or reject the Offer or if Declarant rejects the Offer prior to expiration of such five-day period, then, in such event, the Owner may sell the Lot or Lots to such third party upon the terms and conditions substantially the same as those specified in the Offer Notice and the Purchase Contract. If Declarant accepts the Offer by written notice to Owner within such five-day period, then, in such event, such acceptance shall constitute a formal contract, effective the date of the receipt by the Owner of the Declarant's notice of acceptance, for the sale by the Owner and the purchase by the Declarant of the Lot or Lots upon the same terms and conditions as specified in the Offer Notice and the Purchase Contract whereupon Owner shall prepare, and deliver, a definitive contract to Declarant for execution by the Declarant, in the same form and content as the Purchase Contract.

(b) Applicability. This Right of First Refusal shall encumber and only be applicable to Lots owned by Declarant as of or subsequent to the date of this Second Amendment. Notwithstanding anything to the contrary contained herein, the

Right of First Refusal shall not be applicable to a judicial or non-judicial sale under any deed of trust lien or mortgage encumbering any Lot or other portion of the Property. Additionally, the sale of any Lot or Lots or any other portion of the Property by Declarant shall not be subject to this Right of First Refusal.

(c) Duration. This Right of First Refusal shall remain in full force and effect and shall be a covenant running with the land in perpetuity until terminated by FM Properties Operating Co., on its behalf or in its capacity as Declarant, by filing a termination thereof in the Real Property Records of Travis County, Texas. Any rejection or failure to accept an Offer or Purchase Contract by Declarant shall terminate the Right of First Refusal for that particular Offer and Purchase Contract only. Any subsequent offer regarding the property subject to the rejected Offer shall be subject to this Right of First Refusal.

(d) Notice. Any notice required or permitted to be delivered hereunder to Declarant shall be deemed to be delivered upon hand delivery or three days after the said notice has been deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to Declarant at 8212 Barton Club Drive, Austin, Texas 78735, Attention: James J. Collins, with required copy to Kenneth N. Jones at Strasburger & Price, L.L.P., 2600 One American Center, 600 Congress Avenue, Austin, Texas 78701. Declarant may designate another address by filing a change of address for this Right of First Refusal in the Real Property Records of Travis County, Texas. Any notice to Declarant must include an accurate address to send notice for accepting or rejecting the Offer by Declarant to be effective notice hereunder.

(e) Memorandum of Right of First Refusal. Declarant may, but shall not be obligated to, file a Memorandum of Right of First Refusal in the Real Property Records of Travis County, Texas evidencing the Right of First Refusal set forth herein.

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

3. No Discrimination. It is Declarant's policy to strictly comply with all legal requirements prohibiting discrimination on the basis of race, color, religion, gender, familial status, sex,

marital status, physical disability, or national origin. Accordingly, Declarant, its successors and assigns, shall not exercise its Right of First Refusal on the basis of race, color, religion, gender, familial status, sex, marital status, physical disability, or national origin or any other basis prohibited by law.

Executed on this 18 day of January, 1994.

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

By: James J. Collins
James J. Collins, President

By: Larry Treuter
Larry Treuter, Secretary

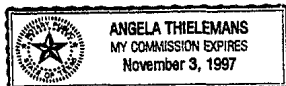
DECLARANT:

FM PROPERTIES OPERATING CO., a
Delaware general partnership

By: James J. Collins
Printed Name: JAMES J. COLLINS
Title: ATTORNEY IN FACT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

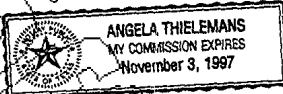
This instrument was acknowledged before me on the 18th day of January, 1994, by James J. Collins, as President of Barton Creek Property Owners Association, Inc.



Angela Thielemans
Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 20th day of January, 1994, by Larry Treuter, as Secretary of Barton Creek Property Owners Association, Inc.

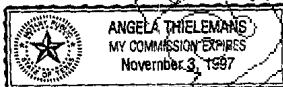


Angela Thielemans

Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF TEXAS §

This instrument was acknowledged before me on the 18th day of January, 1994, by James C. Collins, Attorney-in-fact of Freeport McMoran Inc., a Delaware corporation on behalf of said corporation.



Angela Thielemans

Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

AFTER RECORDING
RETURN TO:

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

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
record RECORDS of Travis County, Texas, as

JAN 26 1994



Dana DeBeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED
JAN 26 3 39 PM '94
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS