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AMENDMENT TO MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Amendment to Master Declaration of Covenants, Conditions and Restrictions (the "Amendment") is made by BARTON CREEK PROPERTIES OWNERS ASSOCIATION, INC., a Texas non-profit corporation (the "Master Association") and STRATUS PROPERTIES OPERATING CO., a Delaware general partnership, formerly known as FM Properties Operating Co. ("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 Stratus Properties Operating Co., a Delaware general partnership, formerly known as FM Properties Operating Co.

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 the 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. **Definitions.** The following provision is added to Article I of the Master Declaration:

"Limited 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 (which designation shall be made in the sole and absolute discretion of the Declarant) as common area which benefits one or more, but less than all of the Lots, Owners or Development Areas, 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 Limited Common Area benefits. The notice designating Limited Common Area shall identify the Lots, Owners or Development Areas benefitted by such Limited Common Area. Limited Common Area shall not be considered a Lot, a Commercial Lot or a Residential Lot as such terms are defined in this Master Declaration. The rights afforded to the Association with respect to Master Common Area pursuant to Article III of the Master Declaration shall also apply to Limited Common Area. The rights afforded to Declarant with respect to Master Common Area pursuant to Section 8.04 and Section 9.01 of the Master Declaration shall also apply to Limited Common Area.

2. **Membership Rights to Limited Common Area.** The following provision is hereby added to Section 3.02 of the Master Declaration:

(d) Each Owner of a Lot or Condominium Unit which has been designated as a beneficiary of Limited Common Area in a notice filed by the Declarant, shall have a right and easement of enjoyment in and to all of such Limited Common Area, and an access easement by and through such Limited Common Area, which easement shall be appurtenant to and shall pass with title to such Owners Lot or Condominium Unit, subject to Section 3.02(b) of the Master Declaration and subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Members voting rights and right to use the Limited 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 Association to dedicate or transfer all or any part of the Limited 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 Limited Common Area and, in furtherance thereof, mortgage the Limited Common Area;
- (iv) The right of the Association to make reasonable rules and regulations regarding use of the Limited Common Area and any improvements thereon; and
- (v) The right of the Association to contract for services to the Limited Common Area with third parties on such terms as the Association may determine.

3. **Limited Common Area Assessments.** The following provision is hereby added to Article V of the Master Declaration:

5.03A. Limited Common Area Assessments. Prior to the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated expenses to be incurred by the Association to maintain, repair, or manage any Limited Common Area, and shall estimate

the amount needed to maintain reasonable provision for contingencies and an appropriate replacement reserve, and shall give due consideration to any expected income and surplus from the prior year's fund. Limited Common Area Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided at the level of Limited Common Area 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 non-payment of any individual Limited Common Area Assessment, the Association may at any time, and from time to time, levy further Limited Common Area Assessments in the same manner as aforesaid. All such Limited Common Area Assessments shall be due and payable to the 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.

4. **Special Assessments.** Section 5.04 of the Master Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

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 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 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 or Limited Common Area. Any special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Master Common Area shall be levied against all Owners based on Assessment Units. Any special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Limited Common Area shall be levied against all Owners who have been designated as a beneficiary of such Limited Common Area and shall be allocated among such Owners based on Assessment Units.

5. **Amount of Assessments.** Section 5.05A and 5.05B of the Master Declaration are hereby deleted in their entirety and the following provisions are substituted in their place:

A. The Board shall levy Assessments on a ratable basis against each "Assessment Unit" (as defined in Section 5.03B below); provided, however, that Limited Common Area Assessments levied pursuant to 5.03A shall be levied uniformly against each Assessment Unit which has been designated as a beneficiary of the Limited Common Area to which such Limited Common Area Assessment relates.

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). Declarant (or the

Board, as the case may be) shall determine such Assessment Unit in its sole and absolute discretion, taking into account, among other things, 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. 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.

6. **Exempt Property.** Section 5.09(b) of the Master Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

(b) The Common Area, the Special Common Area, and the Limited Common Area.

7. **Eminent Domain.** Section 8.02 of the Master Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

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 or Limited 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 Master Common Area 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 Lot or Condominium Units. In the event any proceeds attributable to acquisition of Limited Common Area are paid to Owners who have been designated as a beneficiary of such Limited Common Area, such payment shall be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Units.

8. **Damage and Destruction.** Section 8.10 of the Master Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

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 or Limited 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 or Limited 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 or Limited 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 Master Common Area or Limited Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Master Common Area or Limited Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Master Common Area or Limited Common Area, as determined by the Board, by the Association in a neat and attractive condition.

(d) If insurance proceeds are paid to restore or repair any damaged or destroyed Master 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 V, 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 Limited 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 V, against all Owners designated as a beneficiary of such Limited 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 Master Common Area, such payments shall be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

(g) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Limited Common Area, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners who have been designated as a beneficiary of such Limited Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

9. **Development by Declarant.** Section 10.01 of the Master Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

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 and/or designate Lots, Master Common Area and Limited 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 Development Area.

10. **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 11th day of November, 1998.

MASTER ASSOCIATION:

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

By: David Ruehlman
David Ruehlman, President

By: John Baker
John Baker, Secretary

DECLARANT:

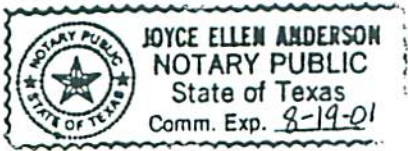
STRATUS PROPERTIES OPERATING CO.,
a Delaware general partnership

By: STRATUS PROPERTIES INC., a Delaware
corporation

By: John Baker
John Baker, Vice-President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

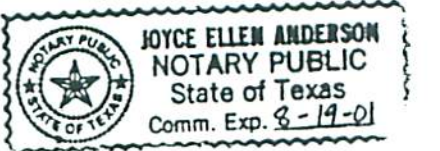
This instrument was acknowledged before me on November 9, 1998, by David Ruehlman, President of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

(seal) 

Joyce Ellen Anderson
Notary Public Signature

THE STATE OF TEXAS §
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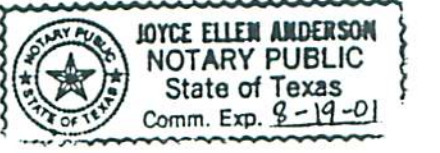
This instrument was acknowledged before me on November 9, 1998, by John Baker, Secretary of Barton Creek Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

(seal) 

Joyce Ellen Anderson
Notary Public Signature

THE STATE OF TEXAS §
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This instrument was acknowledged before me on November 9, 1998, by ~~William~~ ^{John E. Baker} ~~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.
Vice President-Accounting

(seal) 

Joyce Ellen Anderson
Notary Public Signature

REAL PROPERTY RECORDS
TRAVIS COUNTY TEXAS

13309 0474

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
named RECORDS of Travis County, Texas, on

NOV 12 1998



Robert D. Burton
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED

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DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY TEXAS

13309 0475

42747.1

RECEIPT#: R00128743 TRANS#: B2462 DEPT: REGULAR RECORD \$23.00
CASHIER: KHTHU FILE DATE: 11/12/98 TRANS DATE: 11/12/98
PAID BY: CHECK# 16485