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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.

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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 assessment(s) 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 I, 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 L. 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

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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.

2.09. 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).

2.10. 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.

2.11. 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.

2.12. 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.

2.13. 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.

2.14. 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.

2.15. 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.

2.16. 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.

2.17. 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 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 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

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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 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.

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- (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

3.05. 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's Restrictions

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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,

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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 (a) 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, then at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessments 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. Variations. 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 6.03A

and 6.03B hereof); (ii) Special Assessments (as specified in Section 6.04 hereof); and (iii) late charges (as specified in Section 6.06 hereof). 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 Special Common Area, and for carrying out the purposes of the Association as stated herein or as otherwise provided in the Articles or Bylaws.

6.03. 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.

6.03A. 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.

6.03B. Special 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 Special Common Area, and shall estimate the amount needed to maintain reasonable provision for contingencies and appropriate replacement reserve, and shall give due consideration to any expected income and surplus from the prior year's fund. Special Common Area Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided at the level of Special 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 Special Common Area Assessment, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special 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.

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

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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 1.03 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 Lot and not to the Property as a whole.

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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

TRAVIS COUNTY REAL PROPERTY RECORDS

13905 1/2/2008

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13281 0057

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

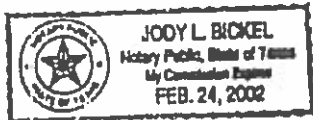
By: Stratus Properties, Inc., a Delaware corporation,
its General Partner

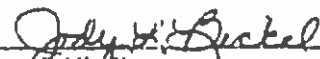
By: 
Printed Name: William H. Armstrong III
Title: President

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

FILED FEB 24 2002

13281 0058

AFTER RECORDING RETURN TO

Robert D. Burton
Armbrist Brown & Davis, L.L.P.
1181 Congress Avenue Suite 1300
Austin, Texas 78701

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was filed on
the 8th day of OCTOBER 1998, at 2:50 PM, and
was duly RECORDED, in the Volume and Page to the
Public RECORDS of Travis County, Texas, on

OCT 8 1998



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED
98 OCT -2 PM 2:50
DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY TEXAS

TRAVIS COUNTY CLERK'S OFFICE
1000 W. BRIDGES BLVD. SUITE 1000
AUSTIN, TEXAS 78703

13281 0059

21 905 12/04/98

25
COUNTY CLERK'S OFFICE
AUSTIN, TEXAS 78703
FAX 512-478-1100

Description: Travis, TX Pre-00 Book, Page 13281, 35 Page: 25 of 25
Order: ff Comment:

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

FILM CODE

00005892384

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 curve on any structure shall not exceed thirty-five feet (35') above the natural grade at any point on the exterior wall of the residence.

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REAL PROPERTY RECORDS
Travis County, Texas

- (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 porch cabere 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 earthen 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

to 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 utilization of gravity flow wastewater service:

Lot #	FFE	Lot #	FFE
Lot 5	783.5	Lot 143	777.4
Lot 6	783.5	Lot 148	777.4
Lot 7	783.5	Lot 149	777.4
Lot 8	781.0	Lot 156	776.4
Lot 9	781.0	Lot 159	783.0
Lot 12	79.5	Lot 160	780.0
Lot 13	79.5	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	781.0	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: *[Signature]*
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.



Joyce Ellen Anderson
Notary Public Signature

AFTER RECORDING, RETURN TO:

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

FILED
99 MAR 16 PM 2:51
CLERK OF COURTS
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was filed on this day and at this hour (except in cases by this act may otherwise be provided) in my office and upon the correct file, BOOK of 13390 PAGE 2935, Travis County, Texas.

MAR 16 1999



RECEIVED: 3/16/99 1:51 PM ORDER: 13390-2935 FILED: 3/16/99 2:51 PM
TRAVIS COUNTY, TEXAS

30544 3.011 990

13390 2935

SECOND 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 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 13390 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

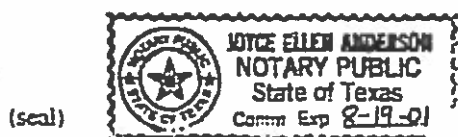
By: **STRATUS PROPERTIES INC.,**
a Delaware corporation

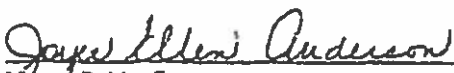
By: 
John Baker, Vice-President

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.




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



OTHER 2005184130
4 PGS

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.

223039-2 09/21/2005

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.

AMENDMENT TO RESTRICTIVE COVENANT
[10(a) RESTRICTION; ABC WEST PHASE 1 – WIMBERLY I]

BARTON CREEK NORTH

This Amendment to Restrictive Covenant [10(a) Restriction; ABC West Phase 1 – Wimberly I] (the "Amendment") is made by STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership ("Stratus") and is as follows:

RECITALS

A. Stratus recorded that certain Restrictive Covenant [10(a) Restriction; ABC West Phase 1], recorded in Volume 13281, Page 0063 of the Real Property Records of Travis County, Texas, as amended (the "10(a) Restriction"), which relates to certain real property therein described.

B. Stratus hereby desires to amend the 10(a) Restriction as set forth hereinbelow.

NOW THEREFORE, Stratus hereby amends and modifies the 10(a) Restriction as follows:

1. Termination of 10(a) Restriction. The following is added as Section 4 to the 10(a) Restriction:

4. Termination. The terms and provisions contained herein shall terminate automatically and be of no further force or effect on January 1, 2010.

2. Amendment to 10(a) Restriction. The following is added as Section 5 to the 10(a) Restriction:

5. Amendment. This Restrictive Covenant can only be amended with the written consent of the Barton Creek North Property Owners Association, Inc. and The Barton Creek ABC West Community, Inc.

3. Effect of Amendment. Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the 10(a) Restriction. Unless expressly amended by this Amendment, all other terms and provisions of the 10(a) Restriction remain in full force and effect as written.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Executed to be effective this 17th day of July, 2007.

STRATUS:

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

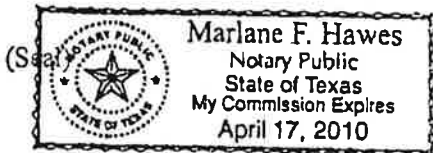
By: STRS L.L.C., a Delaware limited
liability company, General Partner

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

By: _____
Name: John E. Baker
Title: Senior Vice President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 17, 2007, 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 corporation, company and partnership.



Marlane F. Hawes
Notary Public Signature

After Recording Return To:

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

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
Dana DeBeauvoir
2007 Jul 18 01:22 PM 2007132490
BENAVIDESV \$20.00
DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS