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DEVELOPMENT AREA
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE WOODS AT BARTON CREEK

THE STATE OF TEXAS
COUNTY OF TRAVIS

§
§ KNOW ALL MEN BY THESE PRESENTS,
§

This Development Area Declaration of Covenants, Conditions and Restrictions For The Woods At Barton Creek (the "Declaration") is made by FM PROPERTIES OPERATING CO., a Delaware general partnership (the "Declarant"), and is as follows:

RECITALS

A. The Declarant is the owner of all lots in SECTION G AT BARTON CREEK, a subdivision of record in Travis County, Texas according to the map or plat (the "Plat") of record in Volume 92, Pages 227 through 233, inclusive, 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 Section G, dated August 16, 1993, recorded in Volume 12084, Page 0020, 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.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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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:

"Design Review Board" shall mean the committee created pursuant to this Declaration to establish design guidelines, to review and approve plans for the construction of improvements upon the Property, and to carry out its duties as set forth in this Declaration.

"Architectural Guidelines" shall mean "The Architectural Guidelines for The Woods at Barton Creek," to be adopted by the Design Review Board pursuant to this Declaration and amended, modified, or restated from time to time.

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

"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 Association or held for the benefit of the Owners as determined by the Board in its sole discretion, including, without limitation, all private streets and easements for landscape, drainage, irrigation, fence or related purposes. The Common Area may be owned by Declarant or the Association, but held for the use and enjoyment of the Owners.

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

"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.

"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.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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"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.

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. Architectural Guidelines. Pursuant to Section 4.02 (c) below, the Design Review Board shall adopt Architectural Guidelines applicable to the Property and all Improvements constructed on the Property shall strictly comply with those Architectural Guidelines.

2.02. 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 detached single family residence not to exceed thirty-five (35) feet in height above the undisturbed existing grade of the Lot at any point where the height is measured.

(b) Each Lot must contain a private garage for not fewer than two automobiles and off-street parking space for a minimum of two (2) automobiles.

(c) Except for garages on corner Lots, no garage may face or open toward any street, golf course, or greenbelt. Garages located on corner Lots may face a street provided the Design Review Board reviews and issues written approval of the location and design of the garage orientation and opening.

(d) Any residence constructed on any Lot must have a floor area of not less than 3,200 square feet, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages.

(e) Unless otherwise expressly approved by the Design Review Board, the exterior walls of any residence shall consist of one hundred percent (100%) masonry or stucco constructed in strict compliance with the requirements of the Architectural Guidelines. The Design Review Board shall have the authority to permit the use of wood siding in specific circumstances where the Design Review Board determines the limited use of wood 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 other material expressly approved by the Design Review Board.

(g) The location of all buildings and Improvements shall comply with the minimum setbacks shown on the Plat and 2.04 below. In addition to the requirements imposed by the Plat, (i) no building or other Improvement (including all fences) shall be located nearer than fifty (50') from the front Lot line; and (ii) no building or other Improvement (except fences) shall be located nearer than ten feet (10') from any side Lot line, fifty feet (50') from any rear Lot line, or fifty feet (50') from any major thoroughfare or collector street without

the express prior written approval of the Design Review Board. In addition to the individual ten foot (10') side Lot line setbacks set forth in the preceding sentence, the two side yard setbacks for each Lot shall total not less than thirty feet (30'). For the purpose of this restriction, 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) No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot; provided that, in connection with its development of the Property and sale of Lots, Declarant shall have the right to maintain model homes, temporary or permanent sales and marketing centers and offices, and conduct open houses or other marketing events, to which the general public may be invited.

(i) 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.

(j) 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.

(k) All windows on each residence shall have a consistent design throughout the residence and shall strictly comply with the requirements of the Architectural Guidelines.

(l) 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 Design Review Board and shall strictly comply with the requirements of the Architectural Guidelines. Driveways shall be a minimum of ten feet (10') in width at their narrowest point. Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. If a driveway design incorporates a circular drive or requires a large mass of impervious cover, as determined by the Design Review Board in its sole discretion, it must be either surfaced with exposed aggregate or pavers or located so as not to be visible from the street. No asphalt driveways shall be permitted; provided, however, the Design Review Board may allow asphalt to be used on longer driveways, but only for that portion of the driveway which is seventy-five feet (75') or more from the street. Driveways must be located a minimum of ten feet (10') from the side yard lot line and there shall be at least a twenty feet (20') buffer between driveways on adjoining lots which must be landscaped to screen one driveway from the other except as may be otherwise expressly approved in writing by the Design Review Board. The Design Review Board shall establish design and materials requirements for all driveway culverts to insure that they are consistent in appearance throughout the Property.

(m) 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.

(n) The design, construction materials, height, and location of all fences shall be approved by the Design Review Board and shall strictly comply with the requirements of the Architectural Guidelines. Wrought iron, masonry, and wrought iron/masonry combination fences will be preferred.

(o) No residence may exceed two stories unless approved by the Design Review Board.

(p) Notwithstanding the provision of Sections 2.02(a) above, 2.16 below, or elsewhere to the contrary, Declarant shall be entitled to utilize any Lot or residence or other improvement located on a Lot for sales and marketing purposes as Declarant determines appropriate in its sole and absolute discretion.

2.03. Sight Distance at Intersection. No fence, wall, hedge, or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within the triangular area formed by the street line, a driveway or alley line and a line connecting them at points ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections shall be maintained to meet the sight line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

2.04. Golf Course and Common Area Setbacks. Without limiting the provisions of Section 2.02 or the Plat, no building or other residential structure shall be placed on any Lot within eighty (80) feet of the property line of any golf course. In addition, for any Lot which adjoins a golf course, there shall be a thirty-five (35) foot wide buffer zone running parallel and adjacent to the golf course along the entire property line (the "Golf Course Buffer Zone"). No improvements shall be permitted within the Golf Course Buffer Zone. The Golf Course Buffer Zone shall be preserved as a landscape buffer between the golf course and the balance of the Lot and any maintenance of the Golf Course Buffer Zone shall be performed by the Declarant or its designee, which may include the Association. Declarant hereby retains for the benefit of itself or its designee an easement for maintenance of the Golf Course Buffer Zone. Further, within the remaining forty-five feet (45') of the eighty foot (80') setback area (the "Landscape Zone"), no improvements other than landscaping shall be permitted without the Declarant's prior approval. The setback applicable to any Lot line shall be the greatest of the applicable setbacks imposed by the Plat, Section 2.02, or this Section 2.04.

2.05. 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 Design Review Board. Prior to the erection of any Antennae or Solar System, plans and specifications and a proposal for screening shall be presented to and expressly approved by the Design Review Board, 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.

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

2.07. 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; provided, however, that for so long as Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest covering less than the whole Lot, all without the approval of the any other party; provided, further, that the Owner of two or more adjoining Lots may consolidate such Lots into a single building site, with the privilege of constructing improvements as permitted in Section 2.02 hereof on the

consolidated building site. 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.

2.08. 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 Declarant'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. Declarant intends to implement a marketing program for its property, which shall include signs advertising property for sale, and nothing in this Section 2.08 shall restrict that marketing program. If the Declarant elects to permit signs, it may set standards for such signs including, without limitation, maximum dimensions, style, color, type size, and location, as it deems appropriate.

2.09. 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.

2.10. 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).

2.11. Construction of Improvements. As provided in Article IV, 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 Design Review Board.

2.12. 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 Design Review Board as to condition and repair shall be final.

2.13. 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 Design Review Board.

2.14. 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 Design Review Board.

2.15. 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.

2.16. Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the written approval of the Design Review Board; 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 Declarant, such approval to include the nature, size, duration, and location of such structure.

2.17. 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.

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

2.19. 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 two (2) 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.

2.20. 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.

2.21. 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 Design Review Board. 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 Design Review Board deems necessary to preserve the appearance and value of the Property, the Design Review Board 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 Design Review Board 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 the Master 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 the Master Declaration for Assessments and may be collected by any means provided in 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 2.21 (including any cost, fees, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.22. Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area. The Owner of each Lot shall be liable to the Association for all damages to: (i) the Common Area or any Improvements constructed thereon; or (ii) 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 a lien against the Owner's Lot and collectible in the same manner as provided in the Master Declaration.

2.23. 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 Design Review Board 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 for Assessments and may be collected by any means

provided in 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 2.23 (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.

2.24. 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 Design Review Board.

2.25. 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.

2.26. 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 2.26 is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements.

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

ARTICLE III

INSURANCE AND CONDEMNATION

3.01. 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.

3.02. Restoration. In the event of any fire or other casualty, the Owner shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this sentence shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Master Declaration for Assessments and may be collected by any means provided in 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 3.02, except for such cost, loss, damage, expense, liability, claim or cost 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.

3.03. Condemnation. In the event that an action in eminent domain is brought to condemn a portion of the Common Area, the Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for a taking are determined, the damages or awards shall be divided uniformly with equal shares being allocated to each Lot, and thereafter such equal shares shall be paid to the account of each Owner and Mortgagee as their interests may appear, as disclosed to the Association in writing.

3.04. 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 III, 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 IV

DESIGN REVIEW BOARD

4.01. Construction of Improvements. Notwithstanding anything herein or elsewhere to the contrary, no Improvements may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be resubdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Design Review Board.

4.02. Design Review Board.

- (a) Composition. The Design Review Board shall be composed of at least three (3) persons designated by Declarant, who shall review improvements proposed to be made by any Owner other than Declarant. Declarant, and its successors or assigns, shall have the right to appoint and remove (with or without cause) all members of the Design Review Board. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board shall have the right to appoint and remove all members of the Design Review Board. At the first time at which Declarant owns no property subject to the Declaration, the power to appoint and remove members of the Design Review Board shall automatically be vested in the Board.
- (b) Submission and Approval of Plans and Specifications. Construction plans and building specifications and all other submittal requirements, as described in the Architectural Guidelines, including, but not limited to, exterior elevations, exterior construction materials and specifications; a drainage plan; a site plan showing the location of all Improvements; conceptual landscape and drainage plans; a driveway construction plan; and any and all other information or documents that may be required by the Design Review Board (collectively the "Review Materials"), shall be delivered, together with any review fee which is imposed by the Design Review Board in accordance with Section 4.02(c), to the Design Review Board as set out and more fully described in the Architectural Guidelines. No resubdivision or consolidation shall be made, nor any structure or Improvement placed or altered on any Lot, until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Design Review Board. The Design Review Board may, in reviewing the Review Materials, consider any information which it deems proper, including, without limitation, any permits, environmental reports or percolation tests which may be required by the Design Review Board or any other entity; information relating to the question of whether any proposed Improvement would unreasonably obstruct the view from the Property or neighboring Lots; and harmony of external design, height, mass, and location in relation to surrounding structures, topography, vegetation and finished grade elevation. The Design Review Board will discourage the repetitive use of the same or substantially similar plans and elevations in close proximity. The Design Review Board may postpone its review of the Review Materials submitted for approval pending receipt of any information or material which the Design Review Board, in its sole discretion, may require. A copy of the Review Materials, if approved, shall remain in the possession of the Design Review Board until the Property

is built out in its entirety. The Review Materials must be approved by the Design Review Board prior to the clearing of any Lot or the construction of any improvements thereon. The Design Review Board may refuse to approve the Review Materials for proposed Improvements or for the resubdivision or consolidation of any Lots on any grounds which, in the sole and absolute discretion of the Design Review Board, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

- (c) Adoption of Architectural Guidelines. The Design Review Board 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 Design Review Board 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 Design Review Board may amend, modify, supplement or restate the Architectural Guidelines from time to time as it deems advisable. In addition, the Design Review Board 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 Design Review Board and used to defray the administrative expenses incurred by the Design Review Board in performing its duties hereunder; provided, however, that any excess funds held by the Design Review Board shall be distributed to the Association at the end of each calendar year.
- (d) Actions of the Design Review Board. The Design Review Board may, by resolution unanimously adopt in writing, designate one or two of its members or an agent acting on behalf of the Design Review Board, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Design Review Board taken without a meeting shall constitute an act of the Design Review Board.
- (e) Failure to Act. In the event that any final Review Materials are submitted to the Design Review Board during the Final Design Review process, as described in the Design Guidelines, and the Design Review Board shall fail either to approve or reject such Review Materials for a period of thirty (30) days following such submission, no approval by the Design Review Board shall be required, and approval of such Review Materials shall be presumed; provided, however, that such thirty (30) day period shall not begin to run until all information required to be submitted by the Design Review Board to assist in its review of the Review Materials has been received by the Design Review Board. Any failure of the Design Review Board to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Design Review Board's written approval of all requests for variances shall be expressly required.

- (f) Variations. The Design Review Board may grant variations from compliance with any of the provisions of this Declaration or any supplemental declaration hereinafter placed of record, including, but not limited to, restrictions upon height, size, shape, floor areas, land areas, placement of structures, setbacks, construction or maintenance of garages for more than two (2) automobiles and/or garages facing or opening toward any street maintained by the Association or a governmental authority, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Design Review Board, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Property, and such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variations must be evidenced in writing and must be signed by at least a majority of the members of the Design Review Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any supplemental declaration for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.
- (g) Duration of Approval. The approval or consent of the Design Review Board of any Review Materials, whether by action or inaction, and any variations granted by the Design Review Board shall be valid for a period of ninety (90) days only. In the event construction in accordance with such Review Materials or variance is not commenced on a Lot within such 90-day period and diligently prosecuted to completion thereafter, the Owner of the Lot shall be required to resubmit such plans and specifications or request for a variance to the Design Review Board, and the Design Review Board shall have the authority to re-evaluate such Review Materials in accordance with this Section and may, in addition, consider any changes in circumstances which may have occurred since the time of the original approval thereof.
- (h) No Waiver of Future Approvals. The approval or consent of the Design Review Board to any Review Materials for any work done or proposed in connection with any other matter requiring the approval or consent of the Design Review Board shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications, or other matter whatever, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Design Review Board.
- (i) Nonliability of Committee Members. Neither the Design Review Board, nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Design Review Board's duties under this Declaration, unless such loss, damage, or injury is due to the wilful misconduct or bad faith of the Design Review Board or its member, as the case may be.

- (j) Relationship Between Design Review Board and Master Design Review Board. The rights and duties of the Design Review Board may be exercised and discharged by the Master Design Review Board established under the Master Declaration, and any such exercise or discharge by such Master Design Review Board on behalf of the Design Review Board shall be deemed to be in furtherance of this Declaration. Such Master Design Review Board is hereby designated as the body to enjoy all rights and privileges, and discharge all duties of the Design Review Board until such time as such Master Design Review Board shall have abandoned such rights, privileges and duties to the Design Review Board in writing delivered to the Design Review Board. Furthermore, the Design Review Board is authorized to exercise and discharge such rights and duties of the Master Design Review Board affecting the Property as may be delegated to it in writing by the Master Design Review Board.

ARTICLE V

MORTGAGE PROTECTION

5.01. 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."

5.02. 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).

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

ARTICLE VI

GENERAL PROVISIONS

6.01. 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, 2024, 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.

6.02. 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 executed and acknowledged by (i) the Declarant, acting alone; or (ii) the President and Secretary of the Association certifying that such amendment has been approved by either (a) the Declarant, or

(b) Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association and the Declarant.

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

6.04. 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.

6.05. 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.

6.06. 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 Design Review Board.

6.07. 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.

6.08. 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.

6.09. 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.

6.10. 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.

EXECUTED to be effective the 10th day of May, 1994.

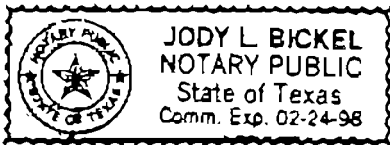
DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: *Charles E. Holmes*
Charles E. Holmes
Attorney-in-Fact

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 10th day of May, 1994, by Charles E. Holmes, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



Jody L. Bickel
Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

MAY 10 1994



Chad Robinson
COUNTY CLERK
TRAVIS COUNTY, TEXAS

AFTER RECORDING, RETURN TO:

Kenneth N. Jones
Strasburger & Price, L.L.P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701-3288

FILED

94 MAY 10 PM 3:56

DAHA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

23426.5/SP/JLB2/1405/051094

- 17 -

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12183 2285

FIRST AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE WOODS AT BARTON CREEK

THE STATE OF TEXAS
COUNTY OF TRAVIS

§
§
§

KNOW ALL MEN BY THESE PRESENTS

This First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for The Woods at Barton Creek (the "Amendment") is made by FM 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 The Woods at Barton Creek recorded in Volume 12183, Page 2269 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 Section C, dated August 16, 1993, recorded in Volume 12084, Page 0020, 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 6.02 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, amends and modifies the Declaration as follows:

1. Article I, Section 1.01 is hereby amended by adding the following provisions:
 - a. "Sub-Association" shall mean and refer to The Woods at Barton Creek Community, Inc., a Texas non-profit corporation.
 - b. "Association Restrictions" shall mean the Declaration as the same may be amended from time to time, together with the Articles, Bylaws, and Sub-Association Rules, from time to time in effect.
 - c. "Sub-Association Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 7.04(c) hereof as may be amended from time to time.
 - d. "Articles" shall mean the Articles of Incorporation of The Woods at Barton Creek 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.
 - e. "Bylaws" shall mean the bylaws of the Sub-Association as adopted by the Board and as amended from time to time.
 - f. "Board" shall mean and refer to the Board of Directors of the Sub-Association.

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g. "Member" or Members" shall mean any person(s), entity or entities holding privileges in the Sub-Association, including Declarant.

2. Article VII is hereby added to the Declaration, and is as follows:

ARTICLE VII

THE SUB-ASSOCIATION

7.01. Organization. The Sub-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 the Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration.

7.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Sub-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 Sub-Association may not be severed from the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.
- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
 - (i) the right of the Sub-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 Sub-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 Sub-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 Sub-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 Sub-Association to contract for services with third parties on such terms as the Sub-Association may determine to be in the best interest of the Sub-Association.

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

The Owner of each Lot, including Declarant, shall have one (1) vote for each lot so owned. In no event, except as set forth in Section 7.03(c) below, 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 the Declaration.

The right of any Owner to vote may be suspended by the Sub-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.

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

(a) Property.

(1) Ownership and Control. To accept, own, operate, and maintain all Common Area, together with all improvements of whatever kind and for whatever purpose that may be located in said Common Area, and all sidewalks, pathways and private driveways and streets located within the Property.

(2) Repair and Maintenance. To maintain in good repair and condition the Common Area and all lands, Improvements, security devices, and other property owned by or leased to the Sub-Association, including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Property.

(3) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area to the extent that such taxes and assessment are not levied directly upon the Members. The Sub-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 Sub-Association's functions.

(c) Rules and Bvlaws. To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such Sub-Association Rules not in conflict with the Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Common Area.

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

7.05. Powers and Authority of the Sub-Association. The Sub-Association shall have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in the Declaration, the Articles and the Bylaws. 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 the Declaration. Without in any way limiting the generality of the two preceding sentences, the Sub-Association and the Board, acting on behalf of the Sub-Association, shall have the power and authority at all times as follows:

- (a) Enforcement. The Sub-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 Sub-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 Sub-Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Sub-Association may not alter or demolish any Improvements on any Lot other than Common Area or Property in enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affect Lot(s) has been obtained. Each such Owner shall indemnify and hold harmless the Sub-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 Sub-Association's acts or activities under this Section 7.05(b) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Sub-Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Sub-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.
- (b) Manager. To retain and pay for the services of a Manager to manage and operate the Sub-Association, including the 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 the Association pursuant to the terms and provisions of the Master Declaration or a Manager for the Property appointed pursuant to the Master Declaration. Additional personnel may be employed directly by the Sub-Association or may be furnished by the Manager. To the extent permitted by law, the Sub-Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Sub-Association hereby release the Sub-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.

- (c) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Sub-Association.
- (d) Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Common Area, including, but not limited to, any recreational facilities; to maintain and repair any recreational facilities, easements, roads, roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, fences, ponds, lakes located within or upon the Common Area, and to maintain and repair other portions of the Common Area.
- (e) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or Sub-Association Assessments that the Sub-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.
- (f) Construction on Sub-Association Property. To construct new Improvements on or additions to Property, subject to the approval of the Architectural Committee.
- (g) Contracts; Property Ownership. To enter into contracts with Declarant and with 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.
- (h) Security Services. To provide for and construct and maintain facilities for the provision of security regarding the Property.

7.06. 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 Sub-Association, the Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-Association would have the power to indemnify such person against such liability hereunder or otherwise.

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

Executed to be effective this 25 day of November, 1996.

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

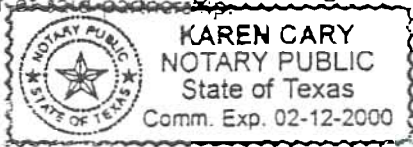
By: [Signature]
William H. Armstrong III Attorney In Fact

STATE OF TEXAS

COUNTY OF TRAVIS

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§
§

This instrument was acknowledged before me on the 25 day of November, 1996 by William H. Armstrong III Attorney In Fact of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



[Signature]
Notary Public Signature

AFTER RECORDING
RETURN TO:

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

FILED

96 NOV 27 AM 9:52

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

**ORIGINAL
FILED FOR RECORD**

ASSIGNMENT OF DECLARANT'S RIGHTS
AND AMENDMENT TO DECLARATIONS

THIS Assignment of Declarant's Rights and Amendment to Declarations (the "Assignment") is made by FM PROPERTIES OPERATING CO., a Delaware general partnership ("Assignor") and THE WOODS AT BARTON CREEK COMMUNITY, INC., a Texas non-profit corporation (collectively, "Assignee"), and is as follows:

RECITALS

A. Assignor is the current "Declarant" under that certain Development Area Declaration of Covenants, Conditions and Restrictions for the Woods at Barton Creek, recorded in Volume 12183, Page 2269, Real Property Records of Travis County, Texas, as amended (the "Deed Restrictions").

B. Assignor desires to transfer and assign all of its rights, title, and interest as Declarant under the Deed Restrictions to Assignee.

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

1. Transfer and Assignment of Declarant's Rights. Assignor does hereby grant, sell, set over, transfer and assign to Assignee, its successors and assigns, all of Assignor's right, title, interest, powers, privileges, benefits and obligations as Declarant under the Deed Restrictions. Assignor hereby retains and reserves from the Assignment (i) the right, but not the obligation, to enforce the terms and provisions of the Deed Restrictions (the "Enforcement Retention"), and (ii) the rights granted Declarant pursuant to Section 6.03 of the Deed Restrictions. The Enforcement Retention shall in no event be interpreted to diminish the rights, privileges, and obligations of Declarant under the Deed Restrictions, it being understood and agreed that Declarant shall also be entitled to enforce any term and provision of the Deed Restrictions.

2. Amendment to Declarations. Assignor, as Declarant, does hereby modify and amend the Deed Restrictions to substitute in its place, Assignee, as the "Declarant" for all intents and purposes. Assignee shall hereinafter have all rights to act and exercise all rights, powers, privileges, benefits and obligations as the Declarant under the Deed Restrictions.

3. Survival of Provisions. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

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

Executed to be effective this 6th day of March, 1997.

ASSIGNOR:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: _____

William H. Armstrong, III, Attorney-in-Fact

ASSIGNEE:

THE WOODS AT BARTON CREEK COMMUNITY, INC., a
Texas non-profit corporation

David Ruehlman

David Ruehlman, President

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on February 11, 1997, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.

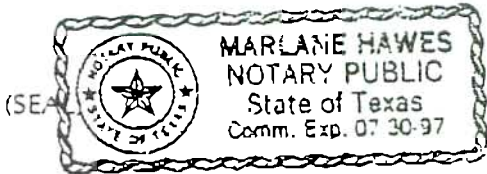


Marlane Hawes
Notary Public Signature

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on February 11, 1997, by David Ruehlman, President of The Woods at Barton Creek Community, Inc., a Texas non-profit corporation, on behalf of said corporation.



Marlane Hawes
Notary Public Signature

After Recording Return To:

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

2.
C
1

SECOND AMENDMENT TO DEVELOPMENT AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE WOODS AT BARTON CREEK

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

This Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for The Woods at Barton Creek (the "Second Amendment") is made by THE WOODS AT BARTON CREEK COMMUNITY, INC., a Texas non-profit corporation (the "Association"), and is as follows:

RECITALS:

A. FM Properties Operating Co., a Delaware general partnership ("Original Declarant") recorded that certain Development Area Declaration of Covenants, Conditions and Restrictions for The Woods at Barton Creek recorded in Volume 12183, Page 2269 of the Real Property Records of Travis County, Texas (the "Declaration") which relates to certain real property (the "Property").

B. Original Declarant amended the Declaration by recording that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for The Woods at Barton Creek recorded in Volume 12823, Page 10 of the Real Property Records of Travis County, Texas.

C. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, dated August 16, 1993, recorded in Volume 12084, Page 0020, 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").

D. Pursuant to that one certain Assignment of Declarant's Rights and Amendment to Declarations dated March 6, 1997, recorded in Volume 12886, Page 0076 of the Real Property Records of Travis County, Texas (the "Assignment"), Original Declarant assigned all of Original Declarant's right, title, interests, powers, privileges, benefits and obligations as Declarant under the Declaration (other than those rights specifically retained and reserved in the Assignment) to the Association and amended the Declaration to substitute the Association as the "Declarant" for all intents and purposes.

E. Pursuant to Section 6.02 of the Declaration, as amended, 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 amended, as follows:

1. Article 1, Section 1.01 is hereby deleted and replaced with new Article 1, Section 1.01 which is as follows:

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 for The Woods at Barton Creek," to be adopted by the Design Review Board pursuant to this Declaration and amended, modified, or restated from time to time.

"Articles" shall mean the Articles of Incorporation of The Woods at Barton Creek 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.

"Association" (and/or "Sub-Association") shall mean and refer to The Woods at Barton Creek Community, Inc., a Texas non-profit corporation.

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

"Bylaws" shall mean the bylaws of the Sub-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 Sub-Association.

"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 Association or held for the benefit of the Owners as determined by the Board in its sole discretion, including, without limitation, all private streets and easements for landscape, drainage, irrigation, fence or related purposes. The Common Area may be owned by Declarant or the Association, but held for the use and enjoyment of the Owners.

"Declarant" shall mean the Woods at Barton Creek Community, Inc., a Texas non-profit corporation, pursuant and subject to the terms and conditions of that one certain Assignment of Declarant's Rights and Amendment to Declarations dated March 6, 1997 and recorded in Volume 12886, Page 0076 of the Real Property Records of Travis County, Texas, by and between FM Properties Operating Co., a Delaware general partnership, as "Assignor" and the Woods at Barton Creek Community, Inc., a Texas non-profit corporation, as "Assignee".

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

"Design Review Board" shall mean the committee created pursuant to this Declaration to establish design guidelines, to review and approve plans for the construction of improvements upon the Property, and to carry out its duties as set forth in this Declaration.

"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.

"Master Association" shall mean and refer to 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 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.

"Member" or "Members" shall mean any person(s), entity or entities holding privileges in the Sub-Association, including Declarant.

"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).

"Original Declarant" shall mean FM Properties Operating Co., a Delaware general partnership, its successors or assigns; provided that any assignment(s) of the rights of FM Properties Operating Co. as Original 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 Original Declarant shall not be sufficient to constitute an assignment of the rights of Original Declarant hereunder.

"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.

"Sub-Association" (and/or "Association") shall mean and refer to the Woods at Barton Creek Community, Inc., a Texas nonprofit corporation.

"Sub-Association Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 7.04(c) hereof as may be amended from time to time.

2. Article II is hereby amended as follows:

a. Previous Section 2.17 "No Tennis Courts" (found after Section 2.26) was incorrectly numbered and is therefore amended to read as follows:

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

b. Section 2.23 has been amended to read as follows:

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

of the Master Association or by the Design Review Board 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 obligation 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 this Declaration and the Master Declaration for Assessments and may be collected by any means provided in this Declaration or the Master Declaration, as the case may be, 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 Master Association and the Association, their officers, directors, employees and agents from any cost, loss, damage expense, liability, claim or cause of action incurred or that may arise by reason of the Master Association' or the Association's acts or activities under this Section 2.23 (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. New Sections 2.28 through 2.38 are hereby added to the Declaration and are as follows:

2.28 Assessments. Assessments established by the Board pursuant to the provisions of this Article II shall be levied against each Lot in amounts determined as herein provided. Each Owner of any Lot shall pay to the Association: (i) Assessments or charges (as specified in Section 2.30 hereof); (ii) Special Assessments (as specified in Section 2.32 hereof); and (iii) late charges (as specified in Section 2.35 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 II shall be in addition to the assessments levied pursuant to the Master Declaration.

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

2.30 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.

2.31 Special Assessments. In addition to the Assessments authorized by Section 2.30 hereof, the Association may, by vote of its Members as set out in Section 2.32 hereof, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Improvement located upon any of the Common Area, or any portion of the Property owned by the Association, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefitting the Association.

2.32 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 2.31 hereof must be approved by a majority of the total votes of the membership of the Association determined in accordance with Section 7.03 hereof, 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.

2.33 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 2.30. 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.

2.34 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.

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

2.36 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 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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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, the then-acting president of the Association 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.

2.37 Exemptions. Notwithstanding any provision herein to the contrary, all Common Area shall be exempt from the payment of any Assessment levied by the Association, regular or special.

3. Article VI, Section 6.03 and 6.09 are amended to read as follows:

6.03 Roadway, Utility and General Fence Easements.

Original 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 Areas, 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.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

6.09 Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Original Declarant, Declarant, the Master Association and/or the Association shall have the right to enforce all of the provisions of this Declaration. The Association or Master 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), Original Declarant, Declarant, the Master Association 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 such provision or any other provision of the Association Restrictions.

4. Article VII is amended as follows:

New sub-section 7.05(i) is hereby added to the Declaration and is as follows:

- (i) Assessments. To levy assessments as provided herein.

5. 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 Second Amendment, all other terms and provisions of the Declaration remain in full force and effect as written.

Executed to be effective this 25th day of July, 1997.

DECLARANT:

THE WOODS AT BARTON CREEK COMMUNITY, INC., a Texas non-profit corporation

By: _____
Director

By: Allen Pinder
Director

By: Barbara McCormack
Director

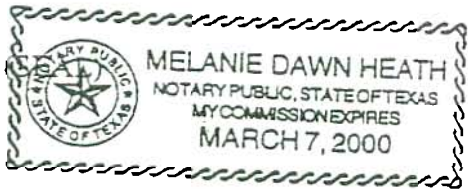
REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of July, 1997 by JOHN BRYAN, Director of The Woods at Barton Creek Community, Inc., a Texas non-profit corporation, on behalf of said corporation.

Melanie Dawn Heath
Notary Public Signature

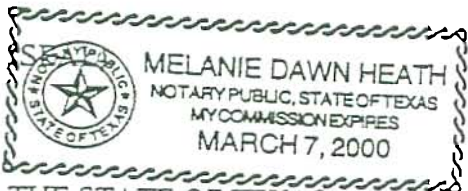


THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of July, 1997 by ALAN LUNDEN, Director of The Woods at Barton Creek Community, Inc., a Texas non-profit corporation, on behalf of said corporation.

Melanie Dawn Heath
Notary Public Signature

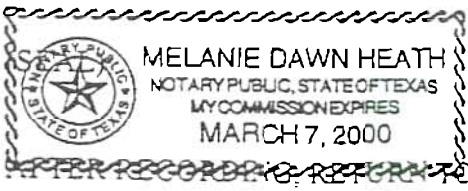


THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of July, 1997 by BARBARA McCORMACK, Director of The Woods at Barton Creek Community, Inc., a Texas non-profit corporation, on behalf of said corporation.

Melanie Dawn Heath
Notary Public Signature



net
Robert D. Burton
Armbrust Brown & Davis, L.L.P.
100 Congress Avenue, Suite 1350
Austin, Texas 78701

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

FILED

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DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS

I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me, and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

AUG 11 1997



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECEIPT#: ACC081906 TRANS#: A6173 DEPT: REGULAR RECORD \$25.00
CASHIER: BAYON FILE DATE: 8/11/97 TRANS DATE: 8/11/97
PAID BY: CHECK# 11210 REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12995 0246

DOC. NO.

EXHIBIT "A"

93151451

FILM CODE

B 15-00 AJ

NOTICE OF APPLICABILITY OF
MASTER DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
BARTON CREEK SECTION G, PHASE 1

00005067757

2.00 INDX
12/16/93

2.00 FICH
12/16/93

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

2.00 SEC
12/16/93

1. Applicability of Master Declaration to Section G. This Notice of Applicability is filed with respect to all lots described and included in the following plat:

FMPOC-51-0004

BARTON CREEK SECTION G, PHASE 1, an addition in Travis County, Texas, according to the map or plat thereof recorded in Volume 92, Pages 227, 228, 229, 230, 231, 232, 233, inclusive, of the Plat Records of Travis County, Texas ("Section G").

Pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990 recorded in Volume 11324, Page 0707 of the Real Property Records of Travis County, Texas (the "Master Declaration"), FMPOC served notice that portions of the Property described in the Master Declaration, upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Declaration.

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

3. Ownership, Maintenance, and Assessments for Maintenance of Private Roads Within Section G. In accordance with the provisions and authority granted under Sections 3.04(J), 3.05, and 8.04 of the Master Declaration, from and after the effective date of this Notice of Applicability, the Master Association shall own and have the obligation to maintain, and levy and collect assessments for the maintenance of Mendocino Drive, Mara Villas Loop, Navidad Drive and Navidad Cove internal private roadways located in Section G (collectively, the "Private Roadways"), as those Private Roadways are depicted on the final subdivision plat for Section G, and any security gates or other devices controlling access (the "Security Facilities") to the Private Roadways. The

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12084 0020

Master Association shall levy, or cause to be levied, assessments against each lot adjoining or benefitting from the Private Roadways for maintenance of the Private Roadways and the Security Facilities, as the Master Association determines appropriate and in accordance with the provisions of the Master Declaration. The Private Roadways shall not be dedicated to or maintained by the City of Austin or Travis County. If the Private Roadways are acquired by Travis County, all special paving and medians within the Private Roadways and the Security Facilities shall be removed by the Master Association to meet Travis County standards. Further, an express easement is hereby granted across the Private Roadways and any adjoining common areas for the use of the surface for all governmental functions, vehicular and non-vehicular, including fire and police protection, solid and other waste material pick up and any other purpose any governmental authority deems necessary, and FMPOC does further agree that all governmental entities, their agents or employees, shall not be responsible or liable for any damage occurring to the surface of the Private Roadways and adjoining common area as a result of governmental vehicles traversing over same. All landscaping located in cul-de-sacs within street rights-of-way, including the Private Roadways, shall be of a limited height and of a type that does not prevent or restrict emergency helicopters, such as Starflight, from landing in such cul-de-sacs.

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

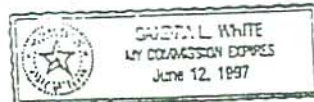
EXECUTED to be effective as of the 16th day of August, 1993.

FM PROPERTIES OPERATING CO., a
Delaware general partnership

BY: Barrett D. Allison
Barrett D. Allison,
Attorney-in-Fact

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This document was acknowledged before me on August 16, 1993 by Barrett D. Allison, Attorney-in-Fact of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



Sandra R. White
Notary Public, State of Texas

9422.1/CLR/1405/081393

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

:2084 0021

AFTER RECORDING, RETURN TO:

Kenneth N. Jones
Strasburger & Price, L.L.P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701-3288

AFTER RECORDING RETURN TO:
CITY OF AUSTIN/PLANNING DEPT.
301 W. 2nd
AUSTIN, TX 78701

ATTN: Hector Avila

FILED
DEC 16 11 42 AM '93
SARA DECAUYOIA
COUNTY CLERK
TRAVIS COUNTY, TEXAS

NOTICE TO THE PUBLIC
I hereby certify that this instrument was filed in
the Public Records of this County on the date and at the hour
herein stated, and that the same is a true and correct copy
of the original as the same appears on the Public Records of
this County, Texas.

DEC 16 1993



[Signature]
COUNTY CLERK
TRAVIS COUNTY, TEXAS

9422-1/02/1405/081383

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12084 0022