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NOTICE OF APPLICABILITY OF
MASTER DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
BARTON CREEK SECTION G, PHASE 2

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This Notice of Applicability of Master Declaration of Covenants, Conditions, and Restrictions For Barton Creek Section G, Phase 2 ("Notice of Applicability") is made and executed by FM PROPERTIES OPERATING CO., a Delaware general partnership ("FMPOC") and is as follows:

1. Applicability of Master Declaration to Section G, Phase 2. This Notice of Applicability is filed with respect to all lots described and included in the following plat:

BARTON CREEK SECTION G, PHASE 2, an addition in Travis County, Texas, according to the map or plat thereof recorded in Volume 910, Pages 2100, 2101, 2102, 2103 inclusive, of the Plat Records of Travis County, Texas ("Section G, Phase 2").

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, Phase 2 Incorporated into Development. The provisions of the Master Declaration shall apply to Section G, Phase 2. Section G, Phase 2 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, Phase 2. In accordance with the provisions and authority granted under Sections 3.04(), 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 Navidad Drive, Quibell Drive, Quibell Cove, Chalk Knoll Drive, Chalk Knoll Cove, and Evian Drive internal private roadways located in Section G, Phase 2 (collectively, the "Private Roadways"), as those Private Roadways are depicted on the final subdivision plat for Section G, Phase 2, and any security gates or other devices controlling access (the "Security Facilities") to the Private Roadways. The Master Association shall levy, or cause to be levied, assessments against each lot adjoining or benefiting 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.

4. Maintenance of Retention/Irrigation Ponds. All retention/irrigation ponds located within Section G, Phase 2 shall be maintained by the entity responsible for such maintenance, at such entity's sole cost and expense.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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DEVELOPMENT AREA,
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK SECTION G, PHASE 2

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DANA BEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY TEXAS

This Development Area Declaration of Covenants, Conditions and Restrictions for Barton Section G, Phase 2 (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 BARTON CREEK SECTION G, PHASE 2, a subdivision of record in Travis County, Texas according to the map or plat (the "Plat") of record in Volume 96, Pages 260 through 263, 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, Phase 2, dated February 14, 1996, recorded in Volume 12647, Page 303, 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.

ARTICLE I

DEFINITIONS

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

"Architectural Guidelines" shall mean the architectural guidelines adopted by the Master Architectural Control Committee pursuant to this Declaration and as authorized by the Master Declaration, as

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

such architectural guidelines may be amended, modified, or restated from time to time. The Architectural Guidelines are referenced in Sections 2.01, 2.02, 4.01, and elsewhere in this Declaration.

"Assessment" or "Assessments" shall mean all assessment(s) imposed by the Association under this Declaration.

"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 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.

"Developer" shall mean and refer to KPKM Venture, Ltd., a Texas limited partnership, its successors or assigns.

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

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

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

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

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

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

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

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 4.01 below, the Master Architectural Control Committee shall adopt Architectural Guidelines applicable to the Property and all Improvements constructed on the Property shall strictly comply with those Architectural Guidelines. Effective the date of this Declaration, the Master Architectural Control Committee has adopted the architectural guidelines set forth in that certain Barton Creek Community The Woods at Barton Creek Architectural Guidelines (the "Woods Guidelines") as the Architectural Guidelines which will be applied to the Property. Any reference in the Woods Guidelines to "The Woods at Barton Creek" or "Barton Creek Section G" shall be substituted with a reference to "Barton Creek Section G, Phase 2." All other terms and provisions of the Woods Guidelines shall apply to construction on any portion of the Property until such time as the Architectural Guidelines are modified, amended, or restated by the Master Architectural Control Committee as authorized by the Master Declaration and this Declaration. In the event of any conflict between the terms and provisions of the Architectural Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall control. In addition, the Master Architectural Control Committee shall have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. The fee referenced in the preceding sentence shall not exceed \$300 per Submittal Package. A Submittal Package must include all those materials referenced on Exhibit 2.01. If a variance is required, additional information may be requested by the Master Architectural Control Committee to evaluate the variance request. The Master Architectural Control Committee shall not be required to review any plans until a Submittal Package is assembled and submitted to the Master Architectural Control Committee. Such charges shall be held by the Master Architectural Control Committee and used to defray the administrative expenses incurred by the Master Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Master Architectural Control Committee shall be distributed to the Association at the end of each calendar year.

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 which shall not exceed the following height limitations and shall meet the following criteria:

- (i) Except as provided in (ii), below, the maximum building height shall be no more than thirty-eight feet (38') measured according to the following definition: the vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. In addition, the height of any eave on any structure shall not exceed thirty-five feet (35') above the natural grade at any point on the exterior wall of the residence.
- (ii) On any residence for which all roof ridges are at least two hundred feet (200') from the nearest portion of a golf course, the maximum building height shall be no more

than forty feet (40') measured according to the following definition: The vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys.

- First Amendment*
- (iii) That portion of the foundation visible from the exterior of the structure must be concealed by a combination of (a) extending the exterior stone or stucco to within twelve inches (12") of the finished grade, and (b) constructing terraced planter boxes, which shall be constructed of the same masonry material as the structure and designed so as to minimize the visual impact of the structure's mass and height.
 - (iv) ~~No gables, other than dormers, shall be permitted on any portion of a roof facing the golf course.~~
 - (v) No roof shall have pitch in excess of 9/12.
 - (vi) No slab shall be more than 24" higher than natural grade at the highest point of natural grade within the foundation footprint. The intent of this provision is to assure that no foundation shall be elevated to purposefully take advantage of a view.

(b) Each Lot must contain a private garage for not fewer than three (3) 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 Master Architectural Control Committee reviews and issues written approval of the location and design of the garage orientation and opening.

(d) Any residence constructed on any Lot (except for Lots 1 through 7, Block E) must have a floor area of not less than 3,500 square feet, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages. Any residence constructed on Lots 1 through 7, inclusive, Block E, must have a floor area of not less than 5,000 square feet, exclusive of open porches, terraces, patios, decks, driveways, and garages.

(e) Unless otherwise expressly approved by the Master Architectural Control Committee the exterior walls of any residence shall consist of one hundred percent (100%) stone or stucco constructed in strict compliance with the requirements of the Architectural Guidelines. The Master Architectural Control Committee shall have the authority to permit the use of wood siding or brick in specific circumstances where the Master Architectural Control Committee determines the limited use of wood siding or brick 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. All roof materials shall be a muted earthtone color.

(g) The location of all buildings and improvements shall comply with the minimum setbacks shown on the Plat and this Declaration. In addition to the requirements imposed by the Plat, (i) no building or other improvement (including all fences) shall be located nearer than forty feet (40') 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 Master Architectural Control Committee. 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'). With respect to any Lot abutting the Barton Creek golf course, no building or other improvement (including fences) shall be located nearer than eighty feet (80') from the rear lot line except for the following:

- (i) Lot 2, Block D. The rear setback for Lot 2, Block D shall be thirty-five feet (35') from the rear Lot line.
- (ii) Fifty-Foot (50') Rear Setback Lots. Lots 3 through 15, inclusive, of Block D; Lots 24, 25, and 27, of Block C; Lots 31, 32, 34, 35, 36, 45, and 49 through 61, inclusive, of Block B shall have a rear setback of fifty feet (50') from the rear Lot line.
- (iii) Golf Course Side Setback Lots. Notwithstanding Section 2.04.A. to the contrary, Lots 1 and 7, Block E; Lots 43, Block B; and Lot 15, Block D, shall have a side setback of twenty feet (20') from the golf course on the side Lot line adjoining the golf course.

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. The setbacks referred to in this subpart (g), above, include the thirty-five foot (35') Golf Course Buffer.

(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, Developer shall have the right to maintain model homes, temporary or permanent sales and marketing centers and offices, and conduct open houses or other marketing events, to which the general public may be invited.

(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) Only wood or wood clad windows shall be permitted and all windows on each residence shall have a consistent design throughout the residence and shall strictly comply with the requirements of the Architectural Guidelines.

(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 Master Architectural Control Committee 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. No asphalt driveways shall be permitted. Driveways must be located a minimum of five feet (5') 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 Master Architectural Control Committee. The Master Architectural Control Committee shall establish design and materials requirements for all driveway culverts to insure that they are consistent in appearance throughout the Property.

(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) All fences must be constructed of wrought iron, stone, or wrought iron/stone combination, must not exceed six feet (6') in height, and shall not be located closer to the street than the front of the residence. Any other materials, height, or location of any fences must be approved by the Master Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines.

FIRST AMENDMENT

~~(c) The second story floor area of any residence located on a lot which adjoins the golf course shall not exceed forty percent (40%) of the enclosed first floor area of the residence. The second story floor area of any lot which does not adjoin the golf course shall not exceed sixty percent (60%) of the enclosed first floor area of the residence. For purposes of this subpart (c), "first floor area" shall include heated or air conditioned space and garages, but shall not include covered or other outdoor spaces. In addition, two-story interior spaces shall be included in the second floor area in calculating the percentage of permitted second floor area under this subpart (c).~~

~~*(d) There shall be no restriction by this Declaration, or The Woods Guidelines on an Owner's ability to remove cedar and no requirement to replace or revegetate for cedar removal.~~

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. Subdivision Fence, Entry Gate, and Landscaping. Prior to the occupancy of any residence located within the Property, the Developer shall complete the Subdivision Fence, the Subdivision Gate, and the Subdivision Landscaping, as those terms are defined in this Section 2.04. The Subdivision Fence shall span the entire width of Landscape Lot 46, Block C, and Landscape Lot 1, Block D from the western to eastern boundary of each lot. The Subdivision Fence shall be of the same design as the subdivision fence for Barton Creek, Section G, Phase 1, and shall be constructed of the same materials and color so as to appear to be one continuous fence along Barton Creek Boulevard. The Subdivision Gate shall provide a gated entrance at the intersection of Barton Creek Boulevard and Chalk Knoll Drive (Lot 74) in the same manner as the gated entries off Barton Creek Boulevard into Barton Creek, Section G, Phase 1. The Subdivision Gate shall be of the same design, constructed of the same materials, and of the same color, and operated in the same manner as the entry gates to Barton Creek Section G, Phase 1. The subdivision landscaping, including irrigation for that landscaping, will be located in Landscape Lot 46, Block C, and Landscape Lot 1, Block D. The Subdivision Landscaping shall be of the same design and using the same plant materials and irrigation as used along the subdivision fence for Barton Creek Section G, Phase 1. Within ten (10) days after the Subdivision Fence, the Subdivision Gate, and Subdivision Landscaping are complete, Lot 46, Block C, and Lot 1, Block D, and all improvements located thereon, shall be conveyed to the Association as Common Area, and shall thereafter be maintained by the Association.

CHECK FIRST AMENDMENT

2.04.A. Golf Course Buffer. Except for the twenty-foot (20') setback in Section 2.02 (g)(iii), for any Lot which adjoins the golf course, there shall be a thirty-five foot (35') wide buffer zone running parallel and adjacent to the golf course along the entire property line abutting the golf course (the "Golf Course Buffer"). No improvements shall be permitted within the Golf Course Buffer. The Golf Course Buffer shall be preserved as a landscape buffer between the golf course and the balance of the Lot. The Golf Course Buffer is hereby subjected to an access and maintenance easement for the benefit of the Association.

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 Master Architectural Control Committee; provide, however, that one (1) satellite dish or other similar instrument with a diameter no greater than two feet (2') may be affixed to the rear roof eave of each single family residence located upon the Property. Prior to the erection of any Antennae (unless otherwise permitted by this Section 2.05) or Solar System, plans and specifications and a proposal for screening shall be presented

to and expressly approved by the Master Architectural Control Committee, which approval may be denied for any reason whatsoever. Any Antennae or Solar System, if approved, shall be entirely screened from view from adjacent lots and streets.

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. 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 Developer's marketing plan for the Property or any part thereof. The Declarant may permit or prohibit signs of any type advertising a portion of the Property for sale or lease, as it elects, in its sole discretion. Developer intends to implement a marketing program for the Property, which shall include signs advertising property for sale; provided, however, that Declarant may set reasonable standards for such signs including, without limitation, maximum dimensions, style, color, type size, and location.

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

2.12. 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 Master Architectural Control Committee 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 Master Architectural Control Committee.

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 Master Architectural Control Committee.

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 Master Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foreman during actual construction may be maintained with the prior approval of Master Architectural Control Committee, such approval to include the nature, size, duration, and location of such structure.

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

2.19. 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 Master Architectural Control Committee. Each Owner shall, however, have the

exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows, and doors within such Owner's structure. In the event an Owner fails to maintain the Improvements located on such Owner's Lot as provided herein in a manner that the Master Architectural Control Committee deems necessary to preserve the appearance and value of the Property, the Master Architectural Control Committee may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event such Owner fails to complete such work or maintenance within said period, the Master Architectural Control Committee shall so notify the Board, and the Board may (but shall not be obligated to) cause such work to be done and the Owner shall be personally liable to the Association for the cost of such work. If the Owner fails to pay such cost upon demand by the Board, such cost (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.21 (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 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 Master Architectural Control Committee or by an aggrieved Owner. Without limiting any rights or powers of the Association or the Board set out in this Declaration, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of this Declaration, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Master Declaration or the Declaration for Assessments and may be collected by any means provided in the Master Declaration or the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.23 (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 Master Architectural Control Committee.

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.

2.27. No Tennis Courts. No tennis courts shall be constructed on any Lot. This Section 2.27 shall not prohibit the installation and construction of "sport courts" on any Lot so long as the design, location, and screening has been approved in advance by the Master Architectural Control Committee.

*FAST
Approved
DD*

2.28

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 or the Declaration for Assessments and may be collected by any means provided in the Master Declaration or 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

ARCHITECTURAL GUIDELINES

4.01. Compliance with Design and Architectural Guidelines. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Property shall strictly comply with the requirements of the Declaration and the Architectural Guidelines, unless a variance is obtained pursuant to Section 4.03.

4.02. Consolidated Plans and Specifications. Notwithstanding any provision in this Declaration, the Master Declaration, or the Architectural Guidelines to the contrary, Developer may submit consolidated plans and specifications (the "Consolidated Plans and Specifications") for any Improvement to be located upon a Lot owned by the Developer to the Master Architectural Control Committee for final approval, without the necessity of submitting to a Pre-Design Meeting or Preliminary Design Review, as such terms are defined in the Architectural Guidelines, provided the Consolidated Plans and Specifications otherwise comply with the Declaration and the Architectural Guidelines (unless a variance is obtained pursuant to Section 4.03). Upon receipt by the Master Architectural Control Committee of the Consolidated Plans and Specifications, or any other submission required by the Architectural Guidelines, the Master Architectural Control Committee shall have fifteen (15) days in which to review such Consolidated Plans and Specifications or other submissions. The Consolidated Plans and Specifications or other submissions will be approved by the Master Architectural Control Committee if the Consolidated Plans and Specifications or other submissions comply with this

Declaration and the Architectural Guidelines. In the event the Master Architectural Control Committee fails to issue its written response within fifteen (15) days of receipt of the Consolidated Plans and Specifications or other submissions the Master Architectural Control Committee's approval shall be deemed to have been granted without further action.

4.03. Variances. The Master Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration or the Architectural Guidelines or when, in the opinion of the Master Architectural Control Committee, in its sole and absolute discretion, 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 variances must be evidenced in writing and must be signed by at least a majority of the members of the Master Architectural Control Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Architectural Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this or Architectural Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.01. Assessments. Each Owner of any Lot, by acceptance of a deed therefor or ownership interest thereto, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant to pay to the Association: (i) Assessments or charges (as specified in Section 5.03 and 5.03A hereof); (ii) Special Assessments (as specified in Section 5.04 hereof); and (iii) late charges (as specified in Section 5.06 hereof). All of such Assessments shall be fixed, established, and collected from time to time as hereinafter provided. The Assessments provided for under this Article V shall be in addition to the assessments levied pursuant to the Master Declaration. Notwithstanding any provision in this Declaration to the contrary, Assessments authorized by this Declaration shall not be assessed against any Lot within the Property until such time as the Developer conveys such Lot to a third party who intends, at any time and from time to time, to reside thereon.

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

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

5.03A. Assessment for Security. Each Owner of a Lot may be assessed a Security Assessment for maintenance and operation of the security gates and related security facilities located on the Property. The amount of the Security Assessment shall be determined by the Board and assessed, billed, collected, secured

and otherwise administered by the Association and payable by each Owner in the same manner as other assessments under this Article V.

5.04. Special Assessments. In addition to the Assessments authorized by Section 5.03 hereof, the Association may, by vote of its Members as set out in Section 5.04A hereof, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Improvement located upon any of the Common Area, or any portion of the Property owned by the Association, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefitting the Association.

5.04A. Vote Required for Special Assessment. Special Assessments levied against the Owner(s) of a particular Lot to cure violations of the Association Restrictions by such Owner(s) shall be deemed approved and authorized automatically upon the occurrence of the events giving rise to such curative Special Assessments. Special Assessments to be levied against all Owners as authorized by Section 5.04 hereof must be approved by a majority of the total votes of the membership of the Association determined in accordance with Section 3.03 of the Master Declaration, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members in accordance with the Bylaws.

5.05. Due Date of Assessments. The first Assessment shall become due and payable on each Lot in accordance with the periodic payment schedule established by the Board in accordance with Section 5.03. The due date of any Special Assessment hereunder shall be fixed in the resolution authorizing such Assessment or, if not so fixed or established by other terms of this Declaration, the first day of the first month following the imposition of such Special Assessment. Payments shall be considered delinquent if not paid within five (5) days after their due date.

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

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

5.08. Assessment Lien and Foreclosure. All sums assessed or charged in the manner provided in this Article but unpaid, together with all costs and expenses of collection, including reasonable attorney's fees, are secured by a continuing Assessment lien and shall constitute a charge on or against the Lot covered by such Assessment or charge, which shall bind such property in the hands of the Owner, and such Owner's heirs, devisees, and personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment thereof in each such instance, each such lien to be superior and paramount to any homestead or other exemption provided by law. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, and all sums unpaid secured by a first-lien Mortgage securing sums borrowed for the purchase or improvements of the Lot in question, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas before the delinquent Assessment was due. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of

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

5.09. 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.

5.10. Restrictive Covenant and Assessment for Section 10(a) Permit. The assessments provided for in this Article 5 above are in addition to the assessment which must be paid by each Owner pursuant to that certain Restrictive Covenant [10(a) Restriction; BARTON CREEK SECTION C, PHASE 2] recorded in the Real Property Records of Travis County, Texas.

ARTICLE VI

MORTGAGE PROTECTION

6.01. 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."

6.02. 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).

6.03. 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 VII

GENERAL PROVISIONS

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

7.02. 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.

7.03. 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.

7.04. 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.

7.05. 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.

7.06. 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 Master Architectural Control Committee.

7.07. 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.

7.08. 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.

7.09. 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.

7.10. 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 19th day of April, 1996.

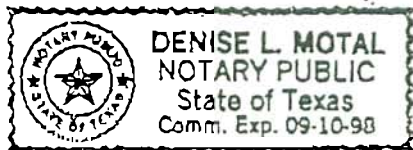
DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: *William H. Armstrong, III*
William H. Armstrong, III, Attorney-in-Fact

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 18th day of April, 1996, by William H. Armstrong, III, Attorney-in-Fact for FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



(SEAL)

Denise L. Motal
Notary Public Signature

AFTER RECORDING, RETURN TO:

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



Design Review Board Final Plan Review Checklist (Page 1 of 2)

Date _____ Lot/Block _____
 Buyer _____
 Builder _____
 Architect _____

Yes No

1. Builder requirements: a complete set of review materials including Site Plan, Landscape Plan, Construction Documents, Building Specifications, and Materials Samples?

2. Site Plan at 1"=10' min. indicating any adjacent structures, including:

- site dimensions
- property lines
- setbacks
- easements and encroachments

• compressor locations

- building location and top of foundation elevations
- driveway and parking locations
- sidewalks, patios, covered porches
- accessory site development
- swimming pool location
- fencing

3. Landscape plan at 1"=10' min.:

- existing/proposed plant locations
- sod areas and seeded areas
- accessory structures
- swimming pools or spa locations
- exterior lighting
- decks, patio, walkway locations
- drainage design
- plant list
- irrigation system
- fencing and entrance walls
- soil amendments design
- installation details and notes

Yes No

4. Construction Documents (1/4"=1')

- building floor plans
- building elevations
- building sections
- roof plan

5. Roof specifications:

- roof materials _____
- manufacturer _____
- series/model _____
- texture and color _____
- 18" minimum overhangs?
- roof pitch _____
- roof peak height _____
- eave height _____
- type of roof _____

gutters/downspouts material and color _____

6. Exterior Wall specifications

- wall materials _____
- manufacturer _____
- series/model _____
- texture/color _____
- mortar color _____
- technique of construction _____

• foundations properly concealed? trim material/color _____

Exhibit 2.01

1/2

RESTRICTIVE COVENANT
[10(A) Restriction; Barton Creek Section G, Phase 2]

FILM CODE
00005421250

This Restrictive Covenant is made by FM PROPERTIES OPERATING CO., a Delaware general partnership ("FMP") and is as follows:

RECITALS:

A. FMP is the owner of BARTON CREEK SECTION G, PHASE 2, a subdivision located in Travis County, Texas, according to the map or plat (the "Plat") recorded in Book 96, Page 260 through 263, inclusive, Plat Records of Travis County, Texas (the "Property").

B. FMP has obtained, at its sole cost and expense, a Section 10(a) Permit from the U.S. Fish and Wildlife Service which benefits, among other properties, the Property and the owner or owners of property therein by permitting development under the Endangered Species Act (the "Section 10(a) Permit").

C. The Section 10(a) Permit requires certain maintenance of endangered species habitat, and FMP desires to impress upon the Property a restrictive covenant which will permit FMP to allocate a portion of the expenses required for such maintenance to the Property (the "Habitat Maintenance Expenses"), and to levy a pro-rata share of such allocation against the owner or owners of each subdivided lot ("Lot") located within the Property.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens and charges, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns; and (ii) that each contract or deed which may be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions, restrictions, liens and charges, regardless of whether the same are set out or referred to in said contract or deed:

1. Allocation of Section 10(a) Habitat Maintenance Expenses. FMP, its successors, assigns, or agent, shall allocate and levy, on an annual basis, a portion of the annual Habitat Maintenance Expenses against each Lot located within the Property (the "Annual Levy"). The amount of the Annual Levy shall be determined by FMP, its successors, assigns, or agent, in its sole and absolute discretion, but in any event the Annual Levy against each Lot shall be uniform and in no event shall the Annual Levy exceed \$291.00 per Lot. The method of levy shall be determined by FMP, in FMP's sole and absolute discretion. A statement of Annual Levy shall be mailed to each Lot owner or owners and/or to any entity or other association created for the purpose of administering the common affairs of the Lot owners (the "Association"). No Annual Levy shall be assessed against a Lot until the earlier to occur of (i) the date a single family residence has been constructed on the Lot and said residence has been sold to the owner or owners who shall reside or who intend to reside thereon; or (ii) March 29, 1998.

Any Annual Levy which remains unpaid thirty (30) days after the Annual Levy statement has been mailed to a Lot owner and/or the Association at the address for such owner maintained by the Travis County Central Appraisal District and/or the Association shall be deemed delinquent. A delinquent Annual Levy shall accrue interest at a rate of twelve percent (12.0%) per annum.

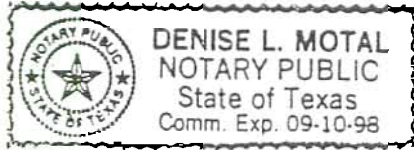
2. Assessment Lien and Foreclosure. A delinquent Annual Levy (together with interest as provided in Paragraph 1 above, and the cost of collection, including attorney's fees as provided for herein) shall become a continuing lien and charge on the Lot covered by the Annual Levy, which shall bind such

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 18th day of April, 1996 by William H. Armstrong, III, Attorney-in-Fact of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.

(SEAL)



Denise L. Motal
Notary Public Signature

AFTER RECORDING RETURN TO:

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

FILED
96 APR 22 PM 2:01
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 specified hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

APR 22 1996



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECEIPT#: A00028743 TRANS#: A7313 DEPT: REGULAR RECORD \$13.00
CASHIER: BAYON FILE DATE: 4/22/96 TRANS DATE: 4/22/96
PAID BY: CHECK# 5105

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

POST-CLOSING AGREEMENT
(Barton Creek Section G, Phase 2)

This Post-Closing Agreement (the "Agreement") is made by and between FM PROPERTIES OPERATING CO., a Delaware general partnership ("FMP") and KPKM VENTURES, LTD., a Texas limited partnership ("KPKM") and is as follows:

RECITALS

A. FMP has conveyed to KPKM by Special Warranty Deed (the "Deed"), of even date herewith, all property (the "Property") located within BARTON CREEK SECTION G, PHASE 2, a subdivision located in Travis County, Texas, according to the map or plat thereof recorded in Volume 96, Pages 260 through 263, inclusive, Plat Records of Travis County, Texas (the "Subdivision Plat") pursuant to that one certain Agreement of Sale and Purchase (Barton Creek - 79 Lots in the Woods, Phase II), dated effective January 1, 1996, as amended by that certain First Amendment to Agreement of Sale and Purchase, dated effective March 7, 1996 and that certain Second Amendment to Agreement of Sale and Purchase, dated effective March 28, 1996 (as amended, the "Contract").

B. In connection with Closing under the Contract, the parties desire to enter into this Agreement to document certain understandings and obligations which will survive and be performable subsequent to Closing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FMP and KPKM agree as follows:

1. Removal of Spoils. Certain spoils or other landscaping materials are currently located on the Property in the area generally depicted on Exhibit "1", attached hereto. Within sixty (60) days of the date of this Agreement, FMP, at its sole expense, shall cause all such materials to be removed.

2. Internal Electrical Facilities. Internal electrical lines to provide service to the Property are currently designed to be located under the pavement of the streets located within the Property. Construction of the internal electrical lines under the pavement involve some additional expense over that which would be required if the electrical facilities could be located within the street right-of-way, but outside the pavement area. Both parties agree to work diligently and in good faith to attempt to redesign the internal electric facilities so as to locate those facilities within the right-of-way, but outside the pavement. If the redesign cannot be accomplished at a reasonable expense, as determined by both parties, then FMP agrees to pay KPKM the additional cost incurred in locating the internal electrical facilities under the pavement, over the cost if those facilities could have been designed and constructed in the right-of-way, but outside the pavement area. The amount due from FMP to KPKM pursuant to the preceding sentence shall be determined by the City of Austin's calculations of the cost differential and shall in no event be more than FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00). FMP shall be required to pay KPKM the amount required by this Section 2 in cash within ten (10) business days of completion of the electrical facilities.

3. Deferral of Homeowner Association Dues. Homeowner association dues assessed by the Barton Creek Property Owners Association, Inc. shall not commence to accrue against any lot located within the Property until the earlier of (i) the completion date of such Lot; or (ii) January 1, 1997.

4. Subdivision Fence, Entry Gate, and Landscaping. Prior to the occupancy of any residence located within the Property, KPKM shall complete the Subdivision Fence, the Subdivision Gate, and the Subdivision Landscaping, as those items are described in this Section 2.04. The Subdivision Fence shall span the entire width of Landscape Lot 46, Block C, and Landscape Lot 1, Block D from the western to the eastern boundaries of each of those lots. The Subdivision Fence shall be of the same design as the subdivision fence

Design Review Board Final Plan Review Checklist (Page 2 of 2)

Date _____ Lot/Block _____

Buyer _____

Yes No

7. Chimney specifications
material/finish _____
_____ Brick _____ Stucco _____ Stone
chimney cap _____
_____ Masonry _____

8. Window specifications
manufacturer _____
series/model _____
color _____
 factory clad?
cladding material _____
_____ Vinyl _____ Alum _____ Factory _____

9. Skylight specifications
manufacturer _____
series/model _____
color _____

10. Exterior door specifications
manufacturer _____
series/model _____
color _____

11. Garage door specifications
manufacturer _____
series/model _____
material _____
color _____

Yes No

12. Driveway finish/material

13. Square footage analysis
garage _____
first floor (HVAC) _____
second floor (HVAC) _____
covered porches _____

14. Sample board with materials and finishes
 roof material and color
 wall material and color
 stone or brick sample
 mortar color
 window material and color
 trim material and color

15. Construction schedule
construction start date _____
construction end date _____
landscaping end date _____

Exhibit 201
2/2

00005499298

13.0
ML

FIRST AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BARTON CREEK SECTION G, PHASE 2

THE STATE OF TEXAS
COUNTY OF TRAVIS

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KNOW ALL MEN BY THESE PRESENTS

This First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2 (this "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 Barton Creek Section G, Phase 2 recorded in Volume 12670, Page 184 of the Real Property Records of Travis County, Texas (the "Declaration"), encumbering Barton Creek Section G, Phase 2, a subdivision of record in Travis County, Texas, according to the map or plat recorded in Volume 96, Page 260, 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, Phase 2, dated February 14, 1996, recorded in Volume 12647, Page 303, 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 7.02 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. General Restrictions.

- (A) Article II, Section 2.02(a)(iv) which provides that "No gables, other than dormers, shall be permitted on any portion of a roof facing the golf course" is hereby deleted in its entirety.
- (B) Article II, Section 2.02(e) is hereby amended to permit the use of slate on exterior gable walls.
- (C) Article II, Section 2.02(o) is hereby deleted in its entirety and the following is substituted in its place:

"(o) The second story floor area of any residence located on a lot will not exceed sixty percent (60%) of the enclosed first floor area of the residence. For the purposes of this subpart (o), "first floor area" shall include heated or air conditioned space and garages, but shall not include covered or other outdoor spaces. In addition, two story interior spaces shall be included in the second floor area in calculating the percentage of permitted second floor area under this subpart (o)."

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

- 2. Subdivision Fence, Entry Gate, and Landscaping. Article II, Section 2.04 is hereby amended to add the following provision:

"On or before eighteen (18) months after Developer has conveyed any lot located within the Property to a third party, a uniform dry stack wall shall be installed parallel and adjacent to any roadway located adjacent to such lot at exposed cuts of over two feet (2') or more from natural grade. The Master Architectural Control Committee shall establish design and material requirements for the dry stack wall to insure a consistent appearance throughout the Property. Landscaping on each lot which adjoins the golf course shall utilize turf grasses established by the Master Architectural Control Committee."

- 3. Natural Gas Appliances. The following provision is hereby added to the Declaration, and is as follows:

"2.28. Natural Gas Appliances. All residences located within the Property must be plumbed for natural gas when constructed in accordance with all applicable governmental requirements. Water heaters, furnaces, and fireplaces (if constructed) installed prior to occupancy of any residence located upon the Property must utilize natural gas for operation. Natural gas connections shall be available for the use of a range and dryer."

- 4. Defined Terms. 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 10 day of OCTOBER, 1996.

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: [Signature]
William H. Armstrong, III, Authorized Agent

THE STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on the 10th day of Oct., 1996 by William H. Armstrong, III, Authorized Agent of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



[Signature]
Notary Public Signature

FILED

96 OCT 11 AM 10:24

AFTER RECORDING RETURN TO:

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

DANA DE BEAUVOIR
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
aforesaid RECORDS of Travis County, Texas, on

OCT 11 1996



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECEIPT#: 80063791 TRANS#: 85114 DEPT: REGULAR RECORD \$13.00
CASHIER: KAFRI FILE DATE: 10/11/96 TRANS DATE: 10/11/96
PAID BY: CHECK# 6501
3

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR BARTON CREEK
SECTION G, PHASE 2

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 Barton Creek Section G, Phase 2 (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 Barton Creek Section G, Phase 2 recorded in Volume 12670, Page 184, 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 G, Phase 2, dated March 20, 1996, recorded in Volume 12647, Page 303, 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. Declarant amended the Declaration by recording that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2, recorded in Volume 12791, Page 1712 of the Real Property Records of Travis County, Texas, (the "First Amendment").

D. Pursuant to Section 7.02 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 previously amended as follows:

1. Article I, Section 1.01, is hereby amended by deleting the following provision:

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

2. Article I, Section 1.01, is hereby amended by adding the following provisions:
- a. "Association" shall mean and refer to The Woods II at Barton Creek Community Association, 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 Association Rules, from time to time in effect.
 - c. "Association Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 8.04(c) hereof as may be amended from time to time.
 - d. "Articles" shall mean the Articles of Incorporation of The Woods II at Barton Creek Community Association, 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 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 Association.
 - g. "Member" or "Members" shall mean any person(s), entity or entities holding privileges in the Association, including Declarant.
 - h. "Master Association" shall mean and refer to The Barton Creek Property Owners Association, Inc., a Texas non-profit corporation.

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

ARTICLE VIII
THE ASSOCIATION

8.01. Organization. The Association shall be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in 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.

8.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership. Membership in the Association may not be severed from

the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.

- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
- (i) the right of the Association to suspend the Member's voting right and right to use the Common Area for any period during which any Assessment against such Member's Lot(s) remains past due, and for any period during which a Member is in violation of the Association Restrictions;
 - (ii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
 - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Area and, in aid thereof, to mortgage said Common Area;
 - (iv) the right of the Association to make reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other persons entitled to such use; and,
 - (v) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interest of the Association.

8.03. 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 8.03(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 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.

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

(a) 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 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 assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(b) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

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

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

8.05. Powers and Authority of the Association. The 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 Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) Enforcement. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Association Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Association Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area or Property enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affected Lot(s) has been obtained. Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 8.05(b) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (b) Manager. To retain and pay for services of a Manager to manage and operate the 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 Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manger 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 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 Association Assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Association Restrictions.
- (f) Construction on Association Property. To construct new Improvements on or additions to Property, subject to the approval of the Master Architectural Control 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.
- (i) Assessments. To levy assessments as provided in the Declaration.

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

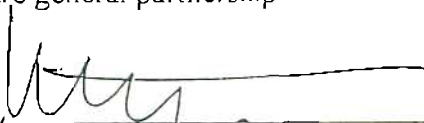
3. Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration or Master Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written.

EXECUTED to be effective this 15th day of October, 1997.

DECLARANT:

FM PROPERTIES OPERATING CO.,
a Delaware general partnership

By:


Attorney-in-fact, its William H. Armstrong, III

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

NOW, THEREFORE, the undersigned Association hereby declares and certifies, amends and modifies the Existing Declaration as previously amended as follows:

1. Section 8.03 of the Existing Declaration is hereby amended in its entirety to read as follows:

"8.03. Dividing, Subdividing, Consolidating, Voting Rights, Assessments.

No further dividing, subdividing, or consolidating of Lots shall be effective, for the purposes of the Association Restrictions, unless the same is approved by the appropriate governmental entity in accordance with the requirements of Chapter 212 of the Texas Local Government Code then in effect (or its successor statute), and duly recorded in the Official Public Records of Travis County, Texas, approved by the Master Architectural Committee in advance and in writing pursuant to other provisions of the Declaration and approved in advance and in writing by the Board of Directors of the Association. After lots have been divided, subdivided, or consolidated, voting rights for casting 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 continue to be determined according to the number of Original Lot(s) contained in such divided, subdivided, or consolidated Lot(s). "Original Lots" shall be defined herein as those lots depicted on the plat of Barton Creek Section G, Phase 2, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 96, Page 260, Plat Records of Travis County, Texas. In cases where the Original Lots have been divided, subdivided or consolidated, such that portions of Original Lots are owned by separate Owners, the voting rights for such Owners shall be determined based on the portion of the Original Lot conveyed to them and in such cases may result in an Owner having one or more whole votes and a fractional vote, such as one and one-half votes. Notwithstanding any provision in this Declaration to the contrary, Assessments levied by the Association shall be equal and uniform based on the Original Lots. After Lots have been divided, subdivided or consolidated, Assessments shall be determined according to the number of Original Lot(s) contained in such divided, subdivided or consolidated Lot(s). In cases where the Original Lots have been divided, subdivided or consolidated, such that portions of the Original Lots are owned by separate Owners, the Assessments levied by the Association and billed to such Owners shall be determined based on the portion of the Original Lot conveyed to each, and in such cases may result in an Owner paying one or more whole Assessments plus a fractional Assessment, such as one and one-half Assessments. Nothing herein shall be construed as authorization for any dividing, subdividing, or consolidating of Lot(s).

The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessments 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."

The undersigned hereby certify that the foregoing Third Amendment was presented to the Members of the Association and that the amendment was approved by Members of the Association entitled to cast at least seventy percent (70%) of the number votes of the Association.

EXECUTED to be effective this 26th day of SEPTEMBER, 2002.

By: Michele Davidson
Michele Davidson, President
The Woods II at Barton Creek
Community Association, Inc.

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this 26 day of SEPTEMBER, 2002 by Michele Davidson, President of The Woods II at Barton Creek Community Association, Inc.

[Signature]
Notary Public, in and for the State of
Texas
KENNETH C. ROMICH
Notary's Typed or Printed Name
My Commission Expires: 11/6/2005



By: Ray Mashburn
Ray Mashburn, Secretary
The Woods II at Barton Creek
Community Association, Inc.

STATE OF TEXAS

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§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this 26th day of SEPTEMBER, 2002 by Ray Mashburn, Secretary of The Woods II at Barton Creek Community Association, Inc.

[Signature]
Notary Public, in and for the State of
Texas
KENNETH C. ROMICH
Notary's Typed or Printed Name
My Commission Expires: 11/6/2005



2. Subdivision Fence, Entry Gate, and Landscaping. Article II, Section 2.04 is hereby amended to add the following provision:

"On or before eighteen (18) months after Developer has conveyed any lot located within the Property to a third party, a uniform dry stack wall shall be installed parallel and adjacent to any roadway located adjacent to such lot at exposed cuts of over two feet (2') or more from natural grade. The Master Architectural Control Committee shall establish design and material requirements for the dry stack wall to insure a consistent appearance throughout the Property. Landscaping on each lot which adjoins the golf course shall utilize turf grasses established by the Master Architectural Control Committee."

3. Natural Gas Appliances. The following provision is hereby added to the Declaration, and is as follows:

"2.28. Natural Gas Appliances. All residences located within the Property must be plumbed for natural gas when constructed in accordance with all applicable governmental requirements. Water heaters, furnaces, and fireplaces (if constructed) installed prior to occupancy of any residence located upon the Property must utilize natural gas for operation. Natural gas connections shall be available for the use of a range and dryer."

4. Defined Term. 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 10 day of OCTOBER 1996.

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: [Signature]
William H. Armstrong, III, Authorized Agent

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

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This instrument was acknowledged before me on the 10th day of Oct., 1996 by William H. Armstrong, III, Authorized Agent of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.



[Signature]
Notary Public Signature

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SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR BARTON CREEK
SECTION G, PHASE 2

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 Barton Creek Section G, Phase 2 (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 Barton Creek Section G, Phase 2 recorded in Volume 12670, Page 184, 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 G, Phase 2, dated March 20, 1996, recorded in Volume 12647, Page 303, 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. Declarant amended the Declaration by recording that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2, recorded in Volume 12791, Page 1712 of the Real Property Records of Travis County, Texas, (the "First Amendment");

D. Pursuant to Section 7.02 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 previously amended as follows:

1. Article I, Section 1.01, is hereby amended by deleting the following provision:

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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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2 Article I, Section 1.01, is hereby amended by adding the following provisions:

a. "Association" shall mean and refer to The Woods II at Barton Creek Community Association, 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 Association Rules, from time to time in effect.

c. "Association Rules" shall mean the rules and regulations adopted by the Board pursuant to Section 8.04(c) hereof as may be amended from time to time.

d. "Articles" shall mean the Articles of Incorporation of The Woods II at Barton Creek Community Association, 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 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 Association.

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

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

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

ARTICLE VIII
THE ASSOCIATION

8.01. Organization. The Association shall be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in 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.

8.02. Membership.

(a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership. Membership in the Association may not be severed from

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TRAVIS COUNTY, TEXAS

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the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.

- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
- (i) the right of the Association to suspend the Member's voting right and right to use the Common Area for any period during which any Assessment against such Member's Lot(s) remains past due, and for any period during which a Member is in violation of the Association Restrictions;
 - (ii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
 - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Area and, in aid thereof, to mortgage said Common Area;
 - (iv) the right of the Association to make reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other persons entitled to such use; and,
 - (v) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interest of the Association.

8.03. 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 8.03(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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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 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.

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

- (a) 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 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 assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (b) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.
- (c) Rules and Bylaws. To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such Association Rules not in conflict with the Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of the Common Area.

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

8.05. Powers and Authority of the Association. The 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 Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) Enforcement. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Association Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Association Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area or Property enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affected Lot(s) has been obtained. Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 8.05(b) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

REAL PROPERTY RECORDS
TRANS COUNTY, TEXAS

- (b) Manager. To retain and pay for services of a Manager to manage and operate the 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 Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manger 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 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 Association Assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Association Restrictions.
- (f) Construction on Association Property. To construct new Improvements on or additions to Property, subject to the approval of the Master Architectural Control 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.
- (i) Assessments. To levy assessments as provided in the Declaration.

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

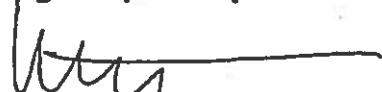
3. Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration or Master Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written.

EXECUTED to be effective this 15th day of October, 1997.

DECLARANT:

FM PROPERTIES OPERATING CO.,
a Delaware general partnership

By:


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

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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**THIRD AMENDMENT
TO DEVELOPMENT AREA DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BARTON CREEK SECTION G, PHASE 2**

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS
COUNTY OF TRAVIS §

This Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2 (the "Amendment") is made by THE WOODS II at BARTON CREEK COMMUNITY ASSOCIATION, INC., a Texas Non-Profit Corporation (the "Association"), whose mailing address is 12335 Hymeadow Drive, Suite 300, Austin, Texas 78750, and is as follows:

Recitals

A. Declarant, recorded that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2 recorded in Volume 12670, Page 184, of the Real Property Records of Travis County, Texas (the "Declaration"), which related to certain real property (the "Property").

B. Pursuant to that certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2, dated March 20, 1996, recorded in Volume 12647, Page 303, 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. Declarant amended the Declaration by recording that certain First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2, recorded in Volume 12791, Page 1712 of the Real Property Records of Travis County, Texas, (the "First Amendment").

D. Declarant further amended the Declaration by recording that certain Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2, recorded in Volume 13052, Page 0546 of the Real Property Records of Travis County, Texas, (the "Second Amendment").

E. Declarant executed that certain Assignment of Declarant's Rights and Amendment to Declarations, dated to be effective March 20, 2002, and recorded as Document #2002058261, Official Public Records, Travis County, Texas (the "Assignment of Declarant's Rights and Amendment").

F. The Declaration, as amended above, is herein called the "Existing Declaration;" and

G. Pursuant to Section 7.02 of the Existing Declaration, the Existing Declaration may be amended by recording in the Official Public Records of Travis County, Texas an instrument setting forth the amendment executed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association.

NOW, THEREFORE, the undersigned Association hereby declares and certifies, amends and modifies the Existing Declaration as previously amended as follows:

1. Section 8.03 of the Existing Declaration is hereby amended in its entirety to read as follows:

"8.03. Dividing, Subdividing, Consolidating, Voting Rights, Assessments,

No further dividing, subdividing, or consolidating of Lots shall be effective, for the purposes of the Association Restrictions, unless the same is approved by the appropriate governmental entity in accordance with the requirements of Chapter 212 of the Texas Local Government Code then in effect (or its successor statute), and duly recorded in the Official Public Records of Travis County, Texas, approved by the Master Architectural Committee in advance and in writing pursuant to other provisions of the Declaration and approved in advance and in writing by the Board of Directors of the Association. After lots have been divided, subdivided, or consolidated, voting rights for casting 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 continue to be determined according to the number of Original Lot(s) contained in such divided, subdivided, or consolidated Lot(s). "Original Lots" shall be defined herein as those lots depicted on the plat of Barton Creek Section G, Phase 2, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 96, Page 280, Plat Records of Travis County, Texas. In cases where the Original Lots have been divided, subdivided or consolidated, such that portions of Original Lots are owned by separate Owners, the voting rights for such Owners shall be determined based on the portion of the Original Lot conveyed to them and in such cases may result in an Owner having one or more whole votes and a fractional vote, such as one and one-half votes. Notwithstanding any provision in this Declaration to the contrary, Assessments levied by the Association shall be equal and uniform based on the Original Lots. After Lots have been divided, subdivided or consolidated, Assessments shall be determined according to the number of Original Lot(s) contained in such divided, subdivided or consolidated Lot(s). In cases where the Original Lots have been divided, subdivided or consolidated, such that portions of the Original Lots are owned by separate Owners, the Assessments levied by the Association and billed to such Owners shall be determined based on the portion of the Original Lot conveyed to each, and in such cases may result in an Owner paying one or more whole Assessments plus a fractional Assessment, such as one and one-half Assessments. Nothing herein shall be construed as authorization for any dividing, subdividing, or consolidating of Lot(s).

The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessments 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."

The undersigned hereby certify that the foregoing Third Amendment was presented to the Members of the Association and that the amendment was approved by Members of the Association entitled to cast at least seventy percent (70%) of the number votes of the Association.

EXECUTED to be effective this 26th day of SEPTEMBER, 2002.

By: Michele Davidson
Michele Davidson, President
The Woods II at Barton Creek
Community Association, Inc.

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on this 26th day of SEPTEMBER, 2002 by Michele Davidson, President of The Woods II at Barton Creek Community Association, Inc.

[Signature]
Notary Public in and for the State of
Texas
KENNETH C. ROMICH
Notary's Typed or Printed Name
My Commission Expires: 11/6/2005



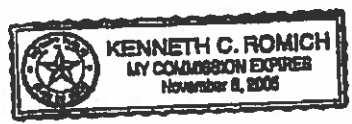
By: Ray Mashburn
Ray Mashburn, Secretary
The Woods II at Barton Creek
Community Association, Inc.

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on this 26th day of SEPTEMBER, 2002 by Ray Mashburn, Secretary of The Woods II at Barton Creek Community Association, Inc.

[Signature]
Notary Public in and for the State of
Texas
KENNETH C. ROMICH
Notary's Typed or Printed Name
My Commission Expires: 11/6/2005



AFTER RECORDING RETURN TO:

**The Woods II at Barton Creek Community Association, Inc.
c/o Liddiard Management Company
12335 Hymeadow Drive
Suite 300
Austin, Texas 78750**

[woods/stand-woods]
6/1/02

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

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DANA DEBEAUVOIR ,COUNTY CLERK
TRAVIS COUNTY, TEXAS

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**THIRD AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR BARTON CREEK SECTION G, PHASE 2**

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TRAVIS

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This Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2 (this "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 Barton Creek Section G, Phase 2 recorded in Volume 12670, Page 184 of the Real Property Records of Travis County, Texas, as amended by the First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions For Barton Creek Section G, Phase 2 recorded in Volume 12791, Page 1712 of the Real Property Records of Travis County, Texas and as amended by the Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek Section G, Phase 2 recorded in Volume 13052, Page 546 of the Real Property Records of Travis County, Texas (the "Declaration"), encumbering Barton Creek Section G, Phase 2, a subdivision of record in Travis County, Texas, according to the map or plat recorded in Volume 96, Page 260, 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, Phase 2, dated February 14, 1996, recorded in Volume 12647, Page 303, 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 7.02 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. General Restrictions.

- (A) Article II, Section 2.02(a)(v) which provides that "No roof shall have pitch in excess of 9/12" is hereby deleted in its entirety.

**RESTRICTIONS INDICATING A PREFERENCE,
LIMITATION OR DISCRIMINATION BASED ON
RACE, COLOR, RELIGION, SEX, HANDICAP,
FAMILIAL STATUS, OR NATIONAL ORIGIN ARE
HEREBY, DELETED TO THE EXTENT SUCH
RESTRICTIONS VIOLATE 42 USC 3604(C).**

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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2. **Defined Terms.** 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 6th day of March, 1998

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

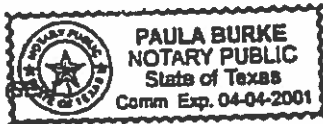
By: 
William H. Armstrong, III, Authorized Agent

THE STATE OF TEXAS

COUNTY OF TRAVIS

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This instrument was acknowledged before me on the 6 day of March, 1998 by William H. Armstrong, III, Authorized Agent of FM Properties Operating Co., a Delaware general partnership, on behalf of said partnership.




Notary Public Signature

AFTER RECORDING RETURN TO:

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

FILED

98 MAR 17 AM 10: 14

**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 herein by me, and
was duly RECORDED, in the Volume and Page of the
public RECORDS of Travis County, Texas, on

MAR 17 1998



Dana Debeauvoir
**COUNTY CLERK
TRAVIS COUNTY, TEXAS**

RECEIPT #: 00102201 TRANS: 06320 DEPT: REGULAR RECORD \$13.00
CASHIER: KHTUE FILE DATE: 3/17/98 TRANS DATE: 3/17/98
PAID BY: CHECK# 13865

**REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS**

13141 1138