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MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

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THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

This Master Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by Barton Creek Properties Inc., a Delaware corporation (the "Declarant") and is as follows:

WHEREAS, Declarant is the owner of certain real property located in Travis County, Texas more particularly described on Exhibit "A" attached hereto; and

WHEREAS, Declarant desires to develop (or cause to be developed) all or portions of the Property (as defined below) as part of a multi-use development consisting of: (i) development areas that will vary (from area to area) as to the use, size and types of development thereof and improvements constructed thereon; (ii) common areas improved by certain aesthetic and/or recreational amenities; and (iii) other improvements all of which shall exist for the benefit and use of the Owners (as defined below); and

WHEREAS, Declarant further desires and intends to provide for the maintenance of the Master Common Area (as defined below), which, pursuant to this Declaration, is to be maintained by all Owners; and

WHEREAS, to accomplish these objectives, Declarant may subject all or portions of the Property (and as provided below, additional properties now or hereafter owned by Declarant) to the covenants, conditions, restrictions, reservations, easements, servitudes, liens, charges and other terms provided herein;

WHEREAS, portions of the Property shall be made subject to this Declaration upon Declarant's filing of one or more notices of applicability pursuant to Section 10.05 below, and, once such notices of applicability have been filed pursuant to Section 10.05, the Property described therein shall constitute the Development (as defined below) and shall be governed by and fully subject to this Declaration, and the Development in turn shall be comprised of separate Development Areas (as defined below) which shall be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Declaration; and

WHEREAS, by the filing of this Declaration, Declarant serves notice that, upon the further filing of one or more notices of applicability pursuant to the requirements of Section 10.05 below, portions of the Property identified in such notice or notices shall be subjected to the terms and provisions of this Declaration.

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0707

NOW, THEREFORE, it is hereby declared (i) that those portions of the Property hereafter subjected to this Declaration pursuant to Section 10.05 below shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of such portions of the Property and which shall run with such portions of the Property and shall be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying those portions of the Property subjected to this Declaration pursuant to Section 10.05 below shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE I

DEFINITIONS

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

"Articles" shall mean and refer to the Articles of Incorporation of the Master Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Assessment" or "Assessments" shall mean assessment(s), both regular and special, imposed by the Master Association under this Declaration.

"Assessment Unit" shall have the meaning set forth in Section 5.05.

"Board" shall mean the Board of Directors of the Master Association.

"Bylaws" shall mean and refer to the Bylaws of the Master Association as adopted and as amended from time to time.

"Commercial Lot" shall mean a portion of the Development shown as a subdivided lot on a Plat other than a Residential Lot, Master Common Area, or Special Common Area, that is intended and designated for business or commercial use. Business or commercial use shall include, but not be limited to, all office, retail, and wholesale activities, and shall also be deemed to include multi-family housing other than a condominium regime.

"Condominium Unit" shall mean an individual unit within a condominium regime established within the Development.

"Declarant" shall mean and refer to Barton Creek Properties Inc. a Delaware corporation, its successors or assigns; provided that any assignment(s) of the rights of Barton Creek Properties Inc., a Delaware corporation, as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

"Development" shall refer to any and all portions of the Property that are hereafter made subject to this Declaration pursuant to Section 10.05 of this Declaration.

"Development Area" shall mean any part of the Development (less than the whole) that is the subject of a Plat, which Development Areas may be subject to Development Area Declarations in addition to being subject to this Declaration.

"Development Area Association," as to each Development Area, shall mean the nonprofit corporation organized and established by Declarant to which, pursuant to the Development Area Declaration for such Development Area, are delegated the powers of owning, maintaining and administering the Special Common Areas, administering and enforcing the covenants and restrictions under, and collecting and disbursing the assessments and charges required by, such Development Area Declaration. Such Development Area Associations may take the form of a Property Owners Association, Commercial Property Owners Association, or Condominium Owners Association.

"Development Area Board of Directors" shall mean the Board of Directors of a Development Area Association.

"Development Area Declaration" shall mean, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

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

"Lot" shall mean and refer to a portion of the Development shown as a subdivided lot on a Plat other than Master Common Area or Special Common Area, and shall include both Commercial Lots and Residential Lots.

"Manager" shall have the meaning ascribed thereto in Section 3.04(I).

"Master Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Master Association" shall mean and refer to the Barton Creek Property Association, a Texas nonprofit corporation.

"Master Common Area" shall mean and refer to all real property, including Improvements located thereon, conveyed to the Master Association by plat dedication or otherwise and held for the benefit of the Owners, excluding only those areas within the Master Common Area dedicated to and accepted by any public authority. The Master Common Area shall include all areas within the Master Common Area that shall be or have been dedicated to all public authorities but not yet accepted by such authorities. The Master Common Area shall be owned by the Master Association for the common use and enjoyment of the Owners. Master Common Area may be designated by Declarant and dedicated or otherwise conveyed to the Master Association from time to time and at any time.

"Master Restrictions" shall mean the restrictions, covenants, and conditions contained in this Declaration, the Bylaws, or in any rules and regulations promulgated by the Master Association pursuant to this Declaration, as adopted and amended from time to time.

"Members" shall mean and refer to every person or entity who holds membership privileges in the Master Association.

"Membership Agreement" shall mean and refer to an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Declaration.

"Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

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

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

"Plat" shall mean a subdivision plat of any portion of the Development as recorded in the Plat Records of Travis County, Texas, and any amendments thereto.

"Property" shall mean all of that certain real property described in Exhibit A attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to Sections 10.03 and 10.04 of this Declaration.

"Residential Lot" shall mean and refer to a portion of the Development shown as a subdivided lot on a Plat, other than Master Common Area or Special Common Area, that is intended and designated solely for single-family residential use.

"Special Common Area" shall mean those portions of the Development designated by the Declarant as common area and dedicated to a Development Area Association by Plat or otherwise, including all Improvements located on such Special Common Area, excluding only those areas within a Special Common Area dedicated to and accepted by public authorities. A Special Common Area shall include, however, all areas within such Special Common Area that shall be or have been dedicated to one or more public authorities but not yet accepted by such public authorities. Special Common Area may be referred to simply as "Common Area" in the Development Area Declaration covering the Development Area within which such Special Common Area is located.

ARTICLE II

GENERAL RESTRICTIONS

2.01 General. All Lots and Condominium Units within the Development shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to any applicable conditions, restrictions, reservations, conditions and easements contained in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located.

2.02 Incorporation of Development Area Declarations. Upon recordation of a Development Area Declaration in the Travis County Real Property Records, such Development Area Declaration shall, automatically and without the necessity of further act, be incorporated into and be deemed to constitute a part of this Declaration, to the extent not in conflict with this Declaration, but shall apply only to the Development Area described in and covered by such Development Area Declaration. Regardless of any amendment or modification to a Development Area Declaration so incorporated in this Declaration by the members of the Development Area Association authorized and created by such Development Area Declaration, any such amendment or modification shall be effective, insofar as this Declaration is concerned, only with the written consent of the Board.

ARTICLE III

THE BARTON CREEK PROPERTY ASSOCIATION

3.01. Organization. The Master Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law, and set forth in its Articles of Incorporation and Bylaws and in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation, by provision thereof in Development Area Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Development Area Associations to own, develop, access, regulate, operate, maintain or manage portions of the Development subject to such Development Area Declarations.

3.02. Membership.

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Master Association. Membership shall be appurtenant to and shall run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to said Lot or Condominium Unit.
- (b) Each Owner other than the Declarant must execute a Membership Agreement and deliver the same to the Master Association prior to or concurrently with the recording of a deed conveying fee title to a Lot or Condominium Unit to such Owner. Each Owner must notify the immediate transferee of his Lot or Condominium Unit of such transferee's obligation to so execute and deliver a Membership Agreement, but the failure to so notify a transferee shall not relieve such transferee of his obligations under this Section 3.02(b). The failure to execute a Membership Agreement shall not prevent any person from being a Member or Owner under the terms of the Articles, Bylaws or Master Restrictions, or excuse any Member from the payment of Assessments. An Owner who has not executed and delivered a Membership Agreement shall automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Master Common Area and applicable Special Common Area. Such Owner shall not be entitled to restoration of his voting privileges and rights in the Master Common Area or applicable Special Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member shall be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card

or other token evidencing or facilitating the right to use any Improvements erected or placed on the Master Common Area or Special Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

(c) Every Member shall have a right and easement of enjoyment in and to all of the Master Common Area and to the Special Common Area within the Development Area in which such Member's Lot or Condominium Unit is located, and an access easement by and through any Master Common Area and such Special Common Area, which easements shall be appurtenant to and shall pass with the title to such Member's Lot or Condominium Unit, subject to Section 3.02(b) above and subject to the following restrictions and reservations:

- (i) The right of the Master Association to suspend the Member's voting rights and right to use the Master Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Declaration;
- (ii) The right of the Master Association to dedicate or transfer all or any part of the Master Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be approved by a majority vote of the Members;
- (iii) The right of the Master Association to borrow money for the purpose of improving the Master Common Area and, in furtherance thereof, mortgage the Master Common Area;
- (iv) The right of the Master Association to make reasonable rules and regulations regarding the use of the Master Common Area and any Improvements thereon; and
- (v) The right of the Master Association to contract for services with third parties on such terms as the Master Association may determine.

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

- (a) The Owner of each Residential Lot shall have one (1) vote for each Residential Lot so owned. In the event of the resubdivision of any Residential Lot into two or more Residential Lots, the number of votes to which such Residential Lot is entitled shall be increased as necessary to

retain the ratio of one (1) vote for each Residential Lot resulting from such resubdivision. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single residence thereon, voting rights shall continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing herein shall be construed as authorization for any resubdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration.

- (b) Each Owner of Commercial Lot(s) and/or Condominium Unit(s) shall have the number of votes for each Commercial Lot and/or Condominium Unit so owned as determined by Declarant (or by the Board, as provided in Section 3.03(f)) at the time that a Development Area Declaration is first recorded in the Travis County Real Property Records for the Development Area within which such Commercial Lot or Condominium Unit is located. Declarant or the Board, as the case may be, shall determine such votes in its sole discretion, taking into account the relationship of such Commercial Lots and/or Condominium Units to the entire Development. Declarant's (or the Board's, as the case may be) determination regarding the number of votes to which such Owners shall be entitled shall be final, binding and conclusive, and shall be recorded in the Travis County Real Property Records. Such determination of Declarant (or the Board, as the case may be) may be set forth in the notice filed by Declarant pursuant to Section 10.05 below for the Development Area within which such Commercial Lot(s) or Condominium Unit(s) are located. Prior to the time any Lots or Condominium Units in such Development Area are conveyed by Declarant to any person not affiliated with Declarant, Declarant or the Board, as the case may be, may amend or modify its allocation of votes by filing an amended notice in the Travis County Real Property Records setting forth the amended allocation.
- (c) In addition to the votes to which Declarant is entitled by reason of Section 3.03(a) and Section 3.03(b), for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until the first time that Declarant owns no Property.
- (d) When more than one person or entity owns a portion of the fee simple interest in any Lot or Condominium Unit, all such persons or entities shall be Members. The vote or votes (or fraction thereof) for such Lot or Condominium Unit shall be exercised by the person so designated in the Membership Agreement relating to such Lot or Condominium Unit, and in no event shall the vote for such Lot or Condominium Unit exceed the total share vote to which such Lot or Condominium Unit is otherwise entitled under this Section 3.03.

(e) The right of any Owner to vote may be suspended by the Master Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) or Condominium Unit(s) remains past due, for any period during which such Owner or such Owner's Lot(s) or Condominium Unit(s) are in violation of this Declaration, and, as provided in Section 3.02(b) above, for any period during which such Owner has failed to execute and deliver a Membership Agreement.

(f) The right and obligation to determine votes allocated to Commercial Lots and Condominium Units shall be transferred automatically from the Declarant to the Board (without necessity of further act) at the first time that Declarant owns no Property.

3.04. Powers. The Master Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Master Association, shall have the following powers at all times:

- (A) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Master Association.
- (B) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Master Association's functions.
- (C) Records. To keep books and records of the Master Association's affairs, and to make such books and records, together with current copies of the Master Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (D) Assessments. To levy and collect assessments, and to determine Assessment Units, as provided in Article V below.
- (E) Right of Entry and Enforcement. To enter at any time, without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon or into any Condominium Unit for the purpose of enforcing the Master Restrictions or for the purpose of

maintaining or repairing any area, Improvement or other facility to conform to this Declaration. The expense incurred by the Master Association in connection with the entry upon any Lot or into any Condominium Unit and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot or Condominium Unit so entered, shall be deemed a special Assessment against such Lot or Condominium Unit, shall be secured by a lien upon such Lot or Condominium Unit, and shall be enforced in the same manner and to the same extent as provided in Article V hereof for Assessments. The Master Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Master Restrictions. The Master Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Master Restrictions; provided, however, that the Board shall never be authorized to expend any Master Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Master Association may not alter or demolish any Improvements on any Lot other than Master Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Master Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. Each such Owner shall indemnify and hold harmless the Master Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Master Association's acts or activities under this Section 3.04(E) (including any cost, expense, liability, claim or cause of action arising out of the Master Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cost of action arising by reason of the Master Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Master Association.
- (G) Collection for Development Area Association. To collect on behalf of and for the account of any Development Area Association (but not to levy except as provided in Sections 3.04(O) and (P)) any assessment made by a Development Area Association.
- (H) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates,

easements, rights-of-way or mortgages, out of, in, on, over, or under any Master Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (a) Parks, parkways or other recreational facilities or structures;
- (b) Roads, streets, street lights, walks, driveways, trails and paths;
- (c) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (e) Any similar improvements or facilities.

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

- (I) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Master Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Master Association or may be furnished by the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. The Members of the Master Association hereby release the Master Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (J) Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Master Association, including but not limited to its recreational facilities; to maintain and repair recreational facilities, easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes located within the Master Common Area, and to maintain and repair other portions of the Master Common Area.
- (K) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Master Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Master Restrictions.
- (L) Construction on Master Association Property. To construct new Improvements or additions to any property owned by the Master

Association, subject to the approval of the Master Architectural Committee.

- (M) Contracts. To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any Master Common Area or to provide any service or perform any function on behalf of Declarant, the Board or the Master Association.
- (N) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (O) Authority with Respect to Development Area Association. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any Development Area Declaration, if in the judgment of the Board, the Development Area Association responsible for such implementation, administration or enforcement is failing to do so; provided, however, that the foregoing powers shall not be exercised by the Board until it has given such Development Area Association written notice of such failure and an opportunity to cure the same within thirty (30) days of the delivery of such notice, unless the Board determines, in its sole discretion, that a shorter time period is necessary to prevent undue loss or damage; and all costs and expenses incurred by the Master Association pursuant to or permitted by this Section 3.04(O) may at the option of the Board be charged to the related Development Area Association and the Master Association may declare a special Assessment under the related Development Area Declaration, which Assessment shall be enforced by the related Development Area Association or by the Master Association pursuant to such Development Area Declaration. Any decision by the Master Association to delay or defer the exercise of the power and authority granted by this Section 3.04(O) shall not subsequently in any way limit, impair or affect ability of the Master Association to exercise such power and authority.
- (P) Manager for Development Area Association. To employ from time to time a managing agent to administer a Development Area Association's affairs, if, in the judgment of the Board, a Development Area Association is failing to carry out its responsibilities set forth in its Development Area Declaration; provided, however, that this power shall not be exercised by the Board until it has given such Development Area Association written notice of such failure and an opportunity to cure the same within thirty (30) days of its receipt of such notice, unless the Board determines, in its sole discretion, that a shorter time period is necessary to prevent undue loss or damage; and all costs and expenses incurred by the Master Association pursuant to or permitted by this Section 3.04(P) may at the option of the Board be charged to the related Development Area Association and the Master Association may declare a special Assessment under the related Development Area Declaration, which Assessment shall be enforced by the

related Development Area Association or by the Master Association pursuant to such Development Area Declaration. The duration of the employment of the managing agent employed by the Board for a Development Area pursuant to this Paragraph shall extend until such time as the Board reasonably determines the applicable Development Area Association will carry out its responsibilities as set forth in the applicable Development Area Declaration.

- (Q) Allocation of Votes. To determine votes as provided in Section 3.03 above.
- (R) Membership Privileges. To establish rules and regulations governing and limiting the use of the Master Common Area and any Improvements thereon.

3.05. Maintenance. The Master Association shall (i) maintain, repair and replace as necessary all landscaping, irrigation systems, entrance signs, traffic signs, and other Improvements (other than actual roadways that have been accepted for maintenance by the appropriate governmental authority) within any right-of-way that is within or adjacent to the Development and that constitutes a portion of the Master Common Area; and (ii) maintain all Master Common Area dedicated to the Master Association for maintenance, by or with the consent of Declarant.

3.06. Street Lighting. The Master Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain any street lights that have not been accepted by any governmental entity for operation and maintenance and that are located within any right-of-way within, adjacent to, or serving the Development.

3.07. Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Master Association, the Master Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Master Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Master Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Master Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

ARTICLE IV

INSURANCE

4.01 Insurance. Each Owner shall be required to purchase and maintain insurance on the Improvements located upon such Owner's Lot, or on such Owner's Condominium Unit, as set forth in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.01. Assessments.

- (A) Assessments established by the Board pursuant to the provisions of this Article III shall be levied against each Lot and Condominium Unit in amounts determined pursuant to Section 5.05 below. The total amount of Assessments shall be determined by the Board pursuant to Section 5.03 and/or 5.04 hereof.
- (B) Each Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied, and shall be secured by a lien hereby granted and conveyed by the Declarant to the Association against each such Lot, and all Improvements thereon, and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Master Association may enforce payment of such Assessments in accordance with the provisions of this Article.

5.02. Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Master Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Master Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment of other maintenance

funds by a Development Area Association pursuant to any Development Area Declaration.

5.03. Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Master Association during such year in performing its functions under this Declaration, including, but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and shall estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and shall give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Master Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Master Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04. Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Master Association under this Declaration. The amount of any special Assessments shall be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Master Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Common Area.

5.05 Amount of Assessment.

A. The Board shall levy Assessments on a ratable basis against each "Assessment Unit" (as defined in Section 5.05(B) below).

B. Each Residential Lot shall constitute one "Assessment Unit." Each Commercial Lot and each Condominium Unit shall constitute that number of "Assessment Units" as determined by Declarant (or, as provided in Section 5.05(E), the Board) at the time that the Development Area Declaration is first recorded in the Travis County Real Property Records for the Development Area within which such Commercial Lot or Condominium Unit is located. Declarant (or the Board, as the case may be) shall determine such Assessment Unit in its sole and absolute discretion, taking into account the relationship of such Commercial Lots and/or Condominium Units to the entire Development. Declarant's (or the Board's, as the case may be) determination regarding the number of Assessment Units applicable to each Commercial Lot or Condominium

Unit shall be final, binding and conclusive, and shall be recorded in the Travis County Real Property Records. Such determination of Declarant (or the Board, as the case may be) may be set forth in the notice filed by Declarant pursuant to Section 10.05 for the Development Area within which such Commercial Lot(s) or Condominium Unit(s) are located.

C. Prior to the time any Lots or Condominium Units in such Development Area are conveyed to any person not affiliated with Declarant, Declarant or the Board, as the case may be, may modify its determination regarding the allocation of Assessment Units by filing an amended notice in the Real Property Records of Travis County, Texas setting forth the amended allocation.

D. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots or Condominium Units owned by Declarant without the consent of Declarant.

E. The right and obligation to determine Assessment Units for Commercial Lots and Condominium Units shall be transferred automatically from the Declarant to the Board (without necessity of further act) at the first time that Declarant owns no Property.

5.06. Late Charges. If any Assessment, whether regular or special, is not paid by the due date applicable thereto, the Owner responsible for the payment thereof may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate from time to time, and the late charge (and any reasonable handling costs therefor) shall be a charge upon the Lot(s) or Condominium Unit(s) owned by such Owner, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s) or Condominium Unit(s) hereinabove granted; provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

5.07. Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein shall be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

5.08. Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with interest as provided in Section 5.07 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Master Association

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pursuant to Section 5.01(B) above, and shall bind each Lot or Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against such Lot or Condominium Unit, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas before the delinquent Assessment was due. The Master Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board, and such subordination may be signed by an officer of the Master Association. The Master Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by one of the officers of the Master Association and shall be recorded in the Travis County Real Property Records. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Declaration, shall be deemed conclusively to have granted a power of sale to the Master Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot or Condominium Unit by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Barry Allison of Travis County, Texas is hereby designated as trustee for the benefit of the Master Association, with the Master Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Master Association may have by law and under this Declaration, including the rights of the Master Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or nonjudicial, such Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot or Condominium Unit, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first-lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale)

from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 5.08, the Master Association shall upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Master Association has already foreclosed such lien. Such release shall be signed by an officer of the Master Association.

5.09. Exempt Property. The following area within the Development shall be exempt from the Assessments provided for in this Article:

(a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Real Property Records of Travis County, Texas; and

(b) The Master Common Area and the Special Common Area.

ARTICLE VI

MASTER ARCHITECTURAL CONTROL COMMITTEE

6.01. Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be resubdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Master Architectural Committee.

6.02. Master Architectural Committee.

(a) **Composition.** The Master Architectural Committee shall be composed of three (3) persons appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause) all members of the Master Architectural Committee. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board shall have the right to appoint and remove all members of the Master Architectural Committee. At the first time at which Declarant owns no Property, the power to appoint and remove members of the Master Architectural Committee shall automatically be vested in the Board.

(b) **Submission and Approval of Plans and Specifications.** Two (2) copies of the construction plans and specifications (including but not limited to exterior views, exterior materials, colors and elevation, a drainage plan, a site plan showing the location of any proposed structure or improvement, a landscaping plan, and a driveway construction plan) or, when an Owner desires solely to resubdivide or consolidate Lots, a proposal in the form required by the Master Architectural Committee, and any other information or documents that may be required by the Master Architectural Committee, shall be delivered, together with any review fee which is imposed by the Master

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Architectural Committee in accordance with Section 6.02(c) to the Master Architectural Committee at the offices of Declarant, 8212 Barton Club Drive, Penthouse of the Spa Building, Austin, Texas 78735, or such other address as may hereafter be designated in writing from time to time, not less than thirty (30) days prior to the date on which the Owner proposes to commence construction or resubdivision/consolidation. No resubdivision or consolidation shall be made, nor any Improvement placed or altered on any Lot, until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Master Architectural Committee. The Master Architectural Committee may, in reviewing such plans and specifications, consider any information that it deems proper, including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Master Architectural Committee or any other entity; information relating to the question of whether any proposed Improvement would unreasonably obstruct the view from the Development or neighboring Lots; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The decisions and determinations of the Master Architectural Committee shall be made in recognition of the Declarant's intent that the exterior of all residences or structures on Residential Lots be constructed of the same types of materials, that such residences or structures be of the same general style, and that any commercial structures or multi-family housing structures be harmonious with the surrounding area and the Development as a whole. The Master Architectural Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Master Architectural Committee, in its sole discretion, may require. A copy of the construction plans and specifications and a site plan showing the location of the proposed structure or Improvement, if approved, shall remain in the possession of the Master Architectural Committee until the Development is built out in its entirety. Site plans must be approved by the Master Architectural Committee prior to the clearing of any Lot, or the construction of any Improvements thereon. The Master Architectural Committee may refuse to approve plans and specifications for proposed Improvements, or for the resubdivision or consolidation of any Lots, on any grounds that, in the sole and absolute discretion of the Master Architectural Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Adoption of Rules and Regulations. The Master Architectural Committee shall have the authority to adopt such procedural and substantive rules and guidelines (including without limitation the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder, including rules and guidelines establishing and describing its review procedures, and principles and criteria used in its review. The Master Architectural Committee may amend or modify or supplement its rules and guidelines from time to time as the Master Architectural Committee deems advisable. In addition, the Master Architectural Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall

be held by the Master Architectural Committee and used to defray the administrative expenses incurred by the Master Architectural Committee in performing its duties hereunder; provided, however, that any excess funds held by the Master Architectural Committee shall be distributed to the Maaster Association at the end of each calendar year

(d) Actions of the Master Architectural Committee. The Master Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Master Architectural Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Master Architectural Committee taken at a duly constituted meeting shall constitute an act of the Master Architectural Committee.

(e) Failure to Act. In the event that any plans and specifications are submitted to the Master Architectural Committee as provided herein, and the Master Architectural Committee shall fail either to approve or reject such plans and specifications for a period of twenty-one (21) days following such submission, no approval by the Master Architectural Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such twenty-one (21) day period shall not begin to run until all information required to be submitted by the Master Architectural Committee to assist in its review of any plans or specifications has been received by the Master Architectural Committee. Any failure of the Master Architectural Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Master Architectural Committee's written approval of all requests for variances shall be expressly required.

(f) Variances. The Master Architectural Committee may grant variances from compliance with any of the provisions of this Declaration or any supplemental declaration hereinafter placed of record, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Master Architectural Committee, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Development, and such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Master Architectural Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any supplemental declaration for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

(g) Duration of Approval. The approval of the Master Architectural Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Master Architectural Committee shall be valid for a period of 90 days only. If construction in accordance with such plans and specifications or variance is not commenced within such 90-day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Master Architectural Committee, and the Master Architectural Committee shall have the authority to re-evaluate such plans and specifications in accordance with this Section and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval thereof.

(h) No Waiver of Future Approvals. The approval of the Master Architectural Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Master Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications, or any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Master Architectural Committee.

(i) Non-liability of Committee Members. Neither the Master Architectural Committee, nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Master Architectural Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Master Architectural Committee or one or more of its members, as the case may be.

(j) Relationship with Architectural Committees Established Under Development Area Declarations. At its option, the Master Architectural Committee may, from time to time and at any time, assume, enjoy, exercise and discharge all rights, privileges, powers and duties of any architectural committee established under any Development Area Declaration, which option may be exercised by the Master Architectural Committee, in its sole discretion, by delivery of written notice to such architectural committee, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate. In addition, and without in any way limiting, impairing or affecting the ability of the Master Architectural Committee subsequently to exercise the authority granted by the preceding sentence, any architectural committee established for a Development Area may delegate its powers and authority to the Master Architectural Committee, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate. If the Master Architectural Committee exercises its right and option to assume and enjoy the rights, privileges, powers and duties of any architectural committee for a Development Area, or if any such architectural committee for a Development Area designates the Master Architectural Committee to enjoy and exercise such rights, privileges, powers and duties, the Master Architectural Committee shall have all of the rights, privileges, powers and

duties granted to such architectural committee by the pertinent Development Area Declaration, and shall have such enjoyment and exercise exclusively until such time as the Master Architectural Committee notifies such Development Area architectural committee in writing that the Master Architectural Committee is abandoning such rights, privileges, powers and duties, it being expressly understood that in such event the Master Architectural Committee shall retain the right to assume or accept a delegation of such rights, privileges, powers or duties at a later date. In addition, the Master Architectural Committee may, from time to time and at any time, delegate to any architectural committee for a Development Area any right or duty of the Master Architectural Committee hereunder, to the extent that the same relates to such Development Area, for such time period and on such terms and conditions as the Master Architectural Committee may deem appropriate.

ARTICLE VII

MORTGAGE PROTECTION

7.01. Notice to Master Association. An Owner who mortgages such Owner's Condominium Unit or Lot shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board shall maintain such information in a book entitled "Mortgagees of Owners"

7.02. Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03. Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and Condominium Units and not to any other portion of the Property.

ARTICLE VIII

GENERAL PROVISIONS

8.01. Term. Upon the filing of a notice pursuant to Section 10.05, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Master Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Real Property Records of Travis County, Texas, and continuing through and including January 1, 2020, after which time this Declaration shall be automatically extended for successive periods of five (5) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by

Members entitled to cast at least seventy percent (70%) of the total number of votes of the Master Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Real Property Records of Travis County, Texas.

8.02. Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Master Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board (and, if desired by the taking authority, the board of directors of the Development Area Association whose Special Common Area is subject to such acquisition) need be made a party, and in any event the proceeds received shall be held by the Master Association for the benefit of the Owners. In the event any proceeds are paid to Owners, such payments shall be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lots or Condominium Units.

8.03. Amendment. This Declaration may be amended or terminated by the recording in the Real Property Records of Travis County, Texas, of an instrument executed and acknowledged by the president and secretary of the Master Association setting forth the amendment and certifying that such amendment has been approved by Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by members of the Master Association.

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

8.05. Enforcement. The Master Association or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

8.06. Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity

of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.07. Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, or any Development Area Declaration or documents creating, governing, or adopted by any Development Area Association, the provisions of this Declaration shall govern.

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

8.09. Acceptance by Grantees. Each grantee of Declarant of a Lot, Condominium Unit or other real property interest in the Development, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall constitute covenants running with the land within the Development, and shall bind any person having at any time any interest or estate in the Development, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

8.10. Damage and Destruction.

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Master Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section 8.10(a), means repairing or restoring the Master Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Master Common Area shall be repaired unless a majority of the Board shall decide within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Master Association within said period, then the period shall be extended until such information shall be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Master Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Master

Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Master Common Area by the Master Association in a neat and attractive condition.

(d) If the damage or destruction for which the insurance proceeds are paid is to be repaired, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special Assessment against all Owners as provided in Article V. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

8.11. No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Master Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development in question has been removed from the provisions of this Declaration pursuant to Section 10.04 below. This Section 8.11 shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

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

ARTICLE IX

EASEMENTS

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

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

ARTICLE X

DEVELOPMENT RIGHTS

10.01. Development by Declarant. It is contemplated that the Development will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to designate Development Areas, to create Lots, Special Common Areas and Master Common Areas and to subdivide with respect to any of the Development pursuant to the terms of this Section 10.01, subject to any limitations imposed on portions of the Development by any applicable Plats. These rights may be exercised with respect to any portions of the Property at any time and from time to time. As each area is developed or dedicated, Declarant may record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may, but need not, provide for the establishment of a Development Area Association to be comprised of Owners within the area subject thereto. Any Development Area Declaration may provide its own procedure for the amendment of any provisions thereof. All lands, Improvements, and uses in each area so developed shall be subject to both this Declaration and the Development Area Declaration, if any, for that Area.

10.02. Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times and from time to time, during the time that Declarant owns any Lot or Condominium Unit in any portion of the Development, Declarant shall have the right and privilege upon approval of the Master Architectural Committee (i) to erect and maintain advertising signs (illuminated or nonilluminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development, (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices, and (iii) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself

to conduct the activities enumerated in this Section 10.02 until all present and future Lots in the Development have been completed and conveyed to third parties.

10.03. Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land as hereinafter described, such land shall be considered part of the Property for purposes of this Declaration, and upon the further filing of a notice of applicability meeting the requirements of Section 10.05 below, such added lands shall be considered part of the Development subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the volume and initial page number of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that such land shall be considered Property for purposes of this Declaration, and that upon the further filing of a notice of applicability meeting the requirements of Section 10.05 of this Declaration, all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land;
- (C) A legal description of the added land; and
- (D) A legal description of all Master Common Area to be owned by the Master Association within the added land as of the date of such addition.

10.04. Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Declaration and the jurisdiction of the Master Association (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property or Development included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property or Development included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and removal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

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

10.05. Notice of Applicability. Upon the filing hereof, this Declaration serves to provide notice that at any time and from time to time all or portions of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration shall apply to and burden portion or portions of the Property upon the filing of a notice of applicability describing such Property by legally sufficient description and expressly providing that such Property shall be considered a part of the Development and shall be subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. Each time that Declarant causes a Development Area Declaration to be recorded covering a portion of the Property that constitutes a Development Area, Declarant may cause a notice of applicability of this Declaration to be filed in the Real Property Records of Travis County, Texas (which notice may be contained within the Development Area Declaration for such Development Area) and immediately upon the filing of such notice, such Property constituting a Development Area shall be burdened by and subject to all of the terms, covenants, conditions, restrictions and obligations set forth herein. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant shall be required only to cause a notice of applicability to be recorded containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the volume and initial page number of the Real Property Records of Travis County, Texas wherein this Declaration is recorded;
- (B) A statement that all of the provisions of this Declaration shall apply to such portion of the Property;
- (C) A legal description of such portion of the Property; and
- (D) A legal description of any Master Common Area to be located within such portion of the Property.

CONSENT OF MORTGAGEE

FMI Credit Corporation, a Delaware corporation, the owner and holder of one or more liens against the Property evidenced by instrument of records in the Real Property Records of Travis County, Texas, as such instruments may have been heretofore amended and/or supplemented, hereby joins in the execution of this Declaration for the purpose of evidencing its consent hereto and hereby subordinates all liens held by it against the Property to the terms of this Declaration. Nothing in this Declaration will constitute a default under any indebtedness owed to the undersigned or any instrument securing the payment thereof.

FMI Credit Corporation

By: _____

EC

Name: E. E. Howard, III

Title: Vice President

Date: November 28, 1990

STATE OF LOUISIANA §

PARISH OF ORLEANS §

Before me, the undersigned authority, on this day personally appeared E. E. Howard, III, Vice President, of FMI Credit Corporation, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Brainerd S. Montgomery

Notary Public, State of Louisiana

Name Printed: Brainerd S. Montgomery

Commission Expires At Death



EXHIBIT "A"
TO MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

1. Those certain 205.015 acre and 328.134 acre tracts of land described in a Special Warranty Deed with Vendor's Lien dated August 31, 1988, from Texas Commerce Bank, Austin, National Association, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 20, 1988, in Volume 10778, Page 0764 of the Real Property Records of Travis County, Texas.
2. Those certain 838.057 acre and 30.029 acre tracts of land described in a General Warranty Deed with Vendor's Lien dated April 28, 1989, from Edmond A. Henderson and wife, Mary Catherine Henderson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on April 28, 1989, in Volume 10927, Page 0616 of the Real Property Records of Travis County, Texas.
3. Those certain 237.95 acre and 12.67 acre tracts of land described in a Special Warranty Deed with Vendor's Lien dated December 22, 1988, from First Interstate Bank of Texas, N.A., a national banking association, formerly known as First Interstate Bank of Beaumont, N.A., formerly known as Allied Bank Beaumont, N.A., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 29, 1988, in Volume 10845, Page 0595 of the Real Property Records of Travis County, Texas.
4. That certain 37.1105 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 21, 1988, from Kathleen Ruth Marshall, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 21, 1988, in Volume 10841, Page 0544 of the Real Property Records of Travis County, Texas.
5. That certain 36.954 acre tract of land described in a Warranty Deed with Vendor's Lien dated May 1, 1989, from Edwin M. Knight, III and Luellen Knight, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on May 1, 1989, in Volume 10928, Page 0652 of the Real Property Records of Travis County, Texas.
6. That certain 36.162 acre tract of land described in a Special Warranty Deed dated August 26, 1988, from the Federal Deposit Insurance Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 6, 1988, in Volume 10768, Page 1513 of the Real Property Records of Travis County, Texas.

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0737

7. That certain 2.0432 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 22, 1989, from Gray Byron Jolink and wife, Katherine C. Jolink, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 24, 1989, in Volume 10882, Page 0001 of the Real Property Records of Travis County, Texas.
8. That certain 43.364 acre tract of land described in a Warranty Deed with Vendor's Lien dated March 6, 1989, from Song Moo Shim and wife, Junghee Shim, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 6, 1989, in Volume 10888, Page 0515 of the Real Property Records of Travis County, Texas.
9. Those certain 5.005 acre and 32.596 acre tracts of land described in a Warranty Deed with Vendor's Lien dated February 28, 1989, from Juan Antonio Santoscoy Cobo, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 3, 1989, in Volume 10887, Page 1098 of the Real Property Records of Travis County, Texas.
10. That certain 2.1768 acre tract of land described in a Warranty Deed with Vendor's Lien dated April 19, 1989, from Roland V. Worrell and wife, Lena J. Worrell, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on April 19, 1989, in Volume 10920, Page 0248 of the Real Property Records of Travis County, Texas.
11. That certain 9.6730 acre tract of land described in a Warranty Deed dated December 2, 1988, from Roland V. Worrell and Lena J. Worrell, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0469 of the Real Property Records of Travis County, Texas.
12. That certain 9.6021 acre tract of land described in a Warranty Deed dated January 10, 1989, from Herman Marx and wife, Ilois R. Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 10, 1989, in Volume 10852, Page 0087 of the Real Property Records of Travis County, Texas.
13. That certain 9.6186 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 20, 1988, from Ernest Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 20, 1988, in Volume 10840, Page 0689 of the Real Property Records of Travis County, Texas; SAVE AND EXCEPT that certain 0.427 acre tract of land described in a Special Warranty Deed dated January 5, 1990, effective January 25, 1990, from Barton Creek Properties Inc., Grantor, to Dan Reese, Grantee, and recorded on January 25, 1990, in Volume 11110, Page 0032 of the Real Property Records of Travis County, Texas, and SAVE AND EXCEPT the portion of such 9.6186 acre tract of land located within Lot 1 of the Estates Above Lost Creek, Section Two, a subdivision in Travis County, according to the map or plat thereof recorded in Volume 88, Page 0359, Plat Records of Travis County, Texas.

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11324 0738

14. That certain 9.6440 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 3, 1989, from Lester Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 3, 1989, in Volume 10869, Page 0604 of the Real Property Records of Travis County, Texas; SAVE AND EXCEPT the portion thereof located within Lot 1 of the Estates Above Lost Creek, Section Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 88, Page 0359, Plat Records of Travis County, Texas, and SAVE AND EXCEPT that certain 1.01 acre tract of land described in a Special Warranty Deed with Declaration of Covenants, Conditions, and Restrictions dated July 17, 1990, effective July 20, 1990, from Barton Creek Properties Inc., Grantor, to Stephen E. Dehan and Alison G. Dehan, Grantee, and recorded on July 20, 1990, in Volume 11233, Page 1292 of the Real Property Records of Travis County, Texas.
15. That certain 9.2007 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 24, 1989, from St. Gregory's Orthodox Christian Church, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 24, 1989, in Volume 10882, Page 0590 of the Real Property Records of Travis County, Texas.
16. That certain 7.2266 acre tract of land as described in a Warranty Deed with Vendor's Lien dated December 14, 1988, from Emil Marx, Jr., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 14, 1988, in Volume 10836, Page 0327 of the Real Property Records of Travis County, Texas.
17. That certain 9.6358 acre tract of land described in a Warranty Deed dated December 2, 1988, from Leona Anderson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0478 of the Real Property Records of Travis County, Texas.
18. That certain 9.6332 acre tract of land described in a Warranty Deed with Vendor's Lien dated February 14, 1989, from Herman Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 14, 1989, in Volume 10875, Page 0343 of the Real Property Records of Travis County, Texas.
19. That certain 9.6348 acre tract of land described in a General Warranty Deed with Vendor's Lien dated January 23, 1989, from Emma Lee Johnson, formerly Emma Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 23, 1989, in Volume 10860, Page 0543 of the Real Property Records of Travis County, Texas.

20. That certain 9.584 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 2, 1988, from Wilburn Hermon Simpson (also known as Wilbur Hermon Simpson) and wife, Shirley Jean Simpson, Calvin Wesley Simpson and wife, Dolores Hope Simpson, Jimmy Ray Simpson and wife, Nancy Joann Simpson, and Floyd Earl Simpson, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 2, 1988, in Volume 10828, Page 0459 of the Real Property Records of Travis County, Texas.
21. Those certain 30.025 acre and 0.139 acre tracts of land described in a Warranty Deed with Vendor's Lien dated January 23, 1989, from Evan Hintner, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 23, 1989, in Volume 10860, Page 0560 of the Real Property Records of Travis County, Texas.
22. That certain 15.962 acre tract of land described in a Warranty Deed with Vendor's Lien dated January 11, 1989, from Jonathan Clare Stupka, also known as John Stupka, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on January 11, 1989, in Volume 10853, Page 0619 of the Real Property Records of Travis County, Texas.
23. That certain 4.432 acre tract of land described in a Warranty Deed with Vendor's Lien dated January 31, 1989, effective as of February 23, 1989, from Robert Lynn Livingston and Iris Lynn Livingston, husband and wife, Channel Associates, a Texas general partnership comprised of John S. Rowley and Mike F. Rowley, and Diane Rowley, as her separate property, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on February 23, 1989, in Volume 10881, Page 0559 of the Real Property Records of Travis County, Texas.
24. That certain 2.437 acre tract of land described in a Warranty Deed with Vendor's Lien dated December 14, 1988, from Stephen L. Marx, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on December 14, 1988, in Volume 10836, Page 0319 of the Real Property Records of Travis County, Texas.
25. That certain 201.31 acre tract of land described in a Warranty Deed dated September 26, 1988, from Fennessey Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 27, 1988, in Volume 10783, Page 0448 of the Real Property Records of Travis County, Texas.
26. Those certain 30.997 acre and 38.311 acre tracts of land described in a Special Warranty Deed dated August 25, 1988, from Belmont Joint Venture, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 7, 1988, in Volume 10769, Page 1255 of the Real Property Records of Travis County, Texas.
27. That certain 100.087 acre tract of land described in a Warranty Deed dated August 25, 1988, from Rathgeber Family Partnership, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 29, 1988, in Volume 10763, Page 0151 of the Real Property Records of Travis County, Texas.

28. That certain 992.199 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated August 25, 1988, from Estates of Barton Creek I, Grantor, to Barton Creek Properties Inc., Grantee, and recorded in Volume 10762, Page 0517 of the Real Property Records of Travis County, Texas, and that certain 211.701 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated September 20, 1988, from Barton Creek Club Joint Venture, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on September 20, 1988, in Volume 10778, Page 0840 of the Real Property Records of Travis County, Texas, ~~SAVE AND EXCEPT~~ that certain 200.388 acre tract of land described in a General Warranty Deed with Vendor's Lien dated December 20, 1988, from Barton Creek Properties Inc., Grantor, to Barton Creek Club, Inc., Grantee, and recorded on December 21, 1988, in Volume 10841, Page 0185 of the Real Property Records of Travis County, Texas.
29. That certain Lot 125, Block A, of Rob Roy on the Creek, Section Seven, and that certain Lot 126, Block A of Rob Roy on the Creek, Section 3, an addition in Travis County, Texas, as further described in a Special Warranty Deed with Vendor's Lien dated August 25, 1988, from Community Investment Properties, Inc., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 26, 1988, in Volume 10762, Page 0514 of the Real Property Records of Travis County, Texas.
30. Those certain 71.053 acre and 24.576 acre tracts of land described in a Warranty Deed with Vendor's Lien dated October 17, 1989, effective October 18, 1989, from Realtex Funding Corp., Grantor, to Barton Creek Properties Inc., Grantee, and recorded on October 20, 1989, in Volume 11048, Page 0401 of the Real Property Records of Travis County, Texas.
31. That certain 61.9912 acre tract of land described in a General Warranty Deed with Vendor's Lien dated July 19, 1989, from Richard L. Bowen and wife, Diane Ruth Bowen, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on July 19, 1989, in Volume 10982, Page 0761 of the Real Property Records of Travis County, Texas.
32. That certain 37.746 acre tract of land described in a General Warranty Deed with Vendor's Lien dated October 10, 1989, from John D. Perkins, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on October 10, 1989, in Volume 11040, Page 0849 of the Real Property Records of Travis County, Texas.
33. That certain 4.8789 acre tract of land described in a General Warranty Deed with Vendor's Lien dated March 7, 1990, from Truman D. Sullivent and Barbara Ann Sullivent, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 8, 1990, in Volume 11139, Page 0979 of the Real Property Records of Travis County, Texas.

34. That certain 4.7714 acre tract of land described in a General Warranty Deed with Vendor's Lien dated March 7, 1990, from Robert B. Tyler and Edith Mae Tyler, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on March 8, 1990, in Volume 11139, Page 0996 of the Real Property Records of Travis County, Texas.
35. Those certain 8.317 acre and 3.989 acre tracts of land described in a General Warranty Deed with Vendor's Lien dated November 20, 1989, from Wilson Development Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on November 20, 1989, in Volume 11068, Page 0395 of the Real Property Records of Travis County, Texas.
36. That certain 88.073 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated August 16, 1990, from Franklin Federal Bancorp, a Federal Savings Bank, transferee of The Federal Savings and Loan Insurance Corporation, as Receiver for Great West Savings Banc, a Texas savings and loan association, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on August 17, 1990, in Volume 11253, Page 0709 of the Real Property Records of Travis County, Texas.
37. That certain 19.00 acre tract of land described in a Special Warranty Deed with Vendor's Lien dated June 19, 1990, from the Federal Deposit Insurance Corporation, as Manager of the FSLIC Resolution Fund, as Successor to the Federal Savings and Loan Insurance Corporation, Grantor, to Barton Creek Properties Inc., Grantee, and recorded on June 22, 1990, in Volume 11214, Page 1077 of the Real Property Records of Travis County, Texas.

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

NOV 30 1990



Dana M. Lawrence
 COUNTY CLERK
 TRAVIS COUNTY, TEXAS

FILED

Nov 30 3 02 PM '90

DAN REBEAUVOIR
 COUNTY CLERK
 TRAVIS COUNTY, TEXAS

Ref. to
 Commercial Title
 1411 West Ave
 Austin, TX 78701

L0598/1421/01U104

REAL PROPERTY RECORDS
 TRAVIS COUNTY, TEXAS

11324 0742

FILM CODE 114

00005700390

00005700390

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

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC Midsection (the "Amendment") is made by FM PROPERTIES OPERATING CO., a Delaware general partnership (the "Declarant"), and is as follows:

RECITALS:

A. Declarant recorded that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC Midsection recorded in Volume 12963, Page 1815 et seq., of the Real Property Records of Travis County, Texas (the "Declaration") which relates to certain real property (the "Property").

B. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek ABC Midsection dated August 8, 1996, recorded in Volume 12893, Page 37, of the Real Property Records of Travis County, Texas, the Property is subject to the Master Declaration of Covenants, Conditions and Restrictions of record in Volume 11324, Page 707 of the Real Property Records of Travis County, Texas (the "Master Declaration").

C. Pursuant to Section 8.02 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 and hereby amends and modifies the Declaration, as follows:

1. Article II, Section 2.02(g) (i) is hereby deleted in its entirety and the following is substituted in its place:

(i) no building or other Improvement (including all fences) shall be located nearer than fifteen feet (15') from the front Lot line; and

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

Executed to be effective this 12th day of March, 1998.

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By:

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

25333.1/031198

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

13141 1134

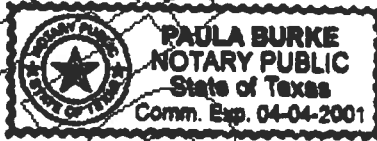
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 12 day of Mar., 1998 by William H. Armstrong, III, Attorney in Fact for FM Properties Operating Co., a Delaware general partnership on behalf of said partnership.

Paula Burke

(SEAL)



Notary Public Signature

AFTER RECORDING, RETURN TO:

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

FILED

98 MAR 17 AM 10:14

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

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

MAR 17 1998



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

25333.1/031198

13141 1135

RECEIPT#: 000102801 TRANS#: 06319 DEPT: REGULAR RECORDS-011.00
CASHIER: KATIE FILE DATE: 3/17/98 TRANS DATE: 3/17/98
PAID BY: CHECK# 13865