

**SECOND AMENDMENT TO MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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FILM CODE

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

This Second Amendment to Master Declaration of Covenants, Conditions and Restrictions (the "Second Amendment") is made by BARTON-CREEK PROPERTY OWNERS ASSOCIATION, INC., a Texas non-profit corporation (the "Master Association") and FM PROPERTIES OPERATING CO., a Delaware general partnership ("Declarant"), and is as follows:

RECITALS:

A. Barton Creek Properties Inc., a Delaware corporation ("BCP"), recorded that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990 recorded in Volume 11324, Page 0707 of the Real Property Records of Travis County, Texas (the "Master Declaration"), which relates to certain real property (the "Property") therein described.

B. Pursuant to that certain Assignment of Rights, dated June 11, 1992, BCP assigned all its rights and interests under the Master Declaration, including the rights of Declarant, to FM Properties Operating Co., a Delaware general partnership.

C. The Master Declaration was amended by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions recorded in Volume 11706, Page 726, of the Real Property Records of Travis County, Texas (the "First Amendment").

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

E. The following amendments have been approved by Declarant as the Owner of Lots within the Development and as a Member of the Master Association entitled to cast at least seventy percent (70%) of the total number of votes entitled to be cast by Members of the Master Association.

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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F. The President and Secretary of the Master Association have executed and caused this instrument to be recorded to effectuate the following amendments to the Master Declaration.

NOW THEREFORE, the undersigned President and Secretary of the Master Association hereby declare and certify that the following amendments and modifications to the Master Declaration have been duly approved by (i) Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by the Members of the Master Association, and (ii) the Declarant:

1. Article VIII of the Master Declaration shall be amended by adding the following:

8.13 Right of First Refusal.

(a) Preferential Right. All Lots owned by the Declarant as of or subsequent to the date of this Second Amendment are hereby encumbered with a continuing right of first refusal to purchase (the "Right of First Refusal") in favor of Declarant. In the event an Owner shall receive a bona fide final written offer ("Offer") from a third party to purchase all or any part of a Lot or Lots subject to the Right of First Refusal, the Owner shall promptly deliver written notice ("Offer Notice") to the Declarant of the terms and the conditions of the Offer together with a copy of the final negotiated contract ("Purchase Contract") evidencing the Offer and allow Declarant five days after receipt by Declarant of the Offer Notice and Purchase Contract to accept or reject the Offer. If Declarant does not accept or reject the Offer or if Declarant rejects the Offer prior to expiration of such five-day period, then, in such event, the Owner may sell the Lot or Lots to such third party upon the terms and conditions substantially the same as those specified in the Offer Notice and the Purchase Contract. If Declarant accepts the Offer by written notice to Owner within such five-day period, then, in such event, such acceptance shall constitute a formal contract, effective the date of the receipt by the Owner of the Declarant's notice of acceptance, for the sale by the Owner and the purchase by the Declarant of the Lot or Lots upon the same terms and conditions as specified in the Offer Notice and the Purchase Contract whereupon Owner shall prepare, and deliver, a definitive contract to Declarant for execution by the Declarant, in the same form and content as the Purchase Contract.

(b) Applicability. This Right of First Refusal shall encumber and only be applicable to Lots owned by Declarant as of or subsequent to the date of this Second Amendment. Notwithstanding anything to the contrary contained herein, the

Right of First Refusal shall not be applicable to a judicial or non-judicial sale under any deed of trust lien or mortgage encumbering any Lot or other portion of the Property. Additionally, the sale of any Lot or Lots or any other portion of the Property by Declarant shall not be subject to this Right of First Refusal.

(c) Duration. This Right of First Refusal shall remain in full force and effect and shall be a covenant running with the land in perpetuity until terminated by FM Properties Operating Co., on its behalf or in its capacity as Declarant, by filing a termination thereof in the Real Property Records of Travis County, Texas. Any rejection or failure to accept an Offer or Purchase Contract by Declarant shall terminate the Right of First Refusal for that particular Offer and Purchase Contract only. Any subsequent offer regarding the property subject to the rejected Offer shall be subject to this Right of First Refusal.

(d) Notice. Any notice required or permitted to be delivered hereunder to Declarant shall be deemed to be delivered upon hand delivery or three days after the said notice has been deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to Declarant at 8212 Barton Club Drive, Austin, Texas 78735, Attention: James J. Collins, with required copy to Kenneth N. Jones at Strasburger & Price, L.L.P., 2600 One American Center, 600 Congress Avenue, Austin, Texas 78701. Declarant may designate another address by filing a change of address for this Right of First Refusal in the Real Property Records of Travis County, Texas. Any notice to Declarant must include an accurate address to send notice for accepting or rejecting the Offer by Declarant to be effective notice hereunder.

(e) Memorandum of Right of First Refusal. Declarant may, but shall not be obligated to, file a Memorandum of Right of First Refusal in the Real Property Records of Travis County, Texas evidencing the Right of First Refusal set forth herein.

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

3. No Discrimination. It is Declarant's policy to strictly comply with all legal requirements prohibiting discrimination on the basis of race, color, religion, gender, familial status, sex,

marital status, physical disability, or national origin. Accordingly, Declarant, its successors and assigns, shall not exercise its Right of First Refusal on the basis of race, color, religion, gender, familial status, sex, marital status, physical disability, or national origin or any other basis prohibited by law.

Executed on this 18 day of January, 1994.

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

By: [Signature]
James J. Collins, President

By: [Signature]
Larry Treuter, Secretary

DECLARANT:

FM PROPERTIES OPERATING CO., a Delaware general partnership

By: [Signature]
Printed Name: JAMES J. COLLINS
Title: ATTORNEY IN FACT

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 18th day of January, 1994, by James J. Collins, as President of Barton Creek Property Owners Association, Inc.



Angela Thielemans
Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 20th day of January, 1994, by Larry Treuter, as Secretary of Barton Creek Property Owners Association, Inc.



Angela Thielemans
Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

STATE OF TEXAS §
COUNTY OF TEXAS §

This instrument was acknowledged before me on the 18th day of January, 1994 by James C. Collins, Attorney-in-fact of Freeport McMoran/Inc., a Delaware corporation on behalf of said corporation.



Angela Thielemans
Notary Public, State of Texas
Printed Name: _____
Commission Expires: _____

AFTER RECORDING
RETURN TO:

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

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

JAN 26 1994



Dana Beadyoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

DANA BEADYOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

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FILED