

6-10-04

#37

STATE OF TEXAS

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COUNTIES OF TRAVIS

§

AND HAYS

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**SECOND AMENDMENT TO
DECLARATION OF RESTRICTIVE COVENANT
(Green Building Agreement)**

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT (this "**Amendment**") is entered into as of the _____ day of _____, 2004, by and between the **CITY OF AUSTIN**, a home rule city and municipal corporation located in Travis, Hays and Williamson Counties in the State of Texas (the "**City**") and **ESCARPMENT VILLAGE, L.P.**, a Texas limited partnership ("**Escarpment**"). The City and Escarpment are collectively referred to as the "**Parties**".

RECITALS

A. Circle C Land Corp., a Texas corporation, executed that certain Declaration of Restrictive Covenant (Green Building Agreement), dated August 15, 2002, and recorded under Document No. 2002151986, Official Public Records, Travis County, Texas, and Document No., 02022404, Official Public Records, Hays County, Texas, as amended by that certain First Amendment to Declaration of Restrictive Covenant (Green Building Agreement), dated effective June 13, 2003, and recorded under Document No. 2003152218, Official Public Records, Travis County, Texas (collectively, the "**Declaration**").

B. The Parties have agreed to amend the Declaration as set out herein with regard to "**Tract 103**", as defined in the Declaration, only (the "**Escarpment Tract**"). The Escarpment Tract is currently owned by Escarpment. Contemporaneously with this Amendment, the Parties, together with Circle C Land, L.P., a Texas limited partnership and successor to Circle C Land Corp., ("**CCLC**") are also amending that certain Development Agreement, dated August 15, 2002 (the "**Development Agreement**") with regard to one of the issues addressed herein, pertaining to the maximum square feet of net floor area that can be used for retail purposes.

AGREEMENT

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

1. Recitals Incorporated. The above recitals are incorporated herein for all

purposes.

2. Capitalized Terms. Any capitalized term that is used herein and is not otherwise defined herein shall have the meaning that is ascribed to it elsewhere either in the Declaration or in the Development Agreement.

3. Feasibility. The second sentence of Section 2.1 is deleted in its entirety, and the following is substituted in its place:

For purposes of determining feasibility under this Declaration, the reviewer may consider, among other things and as applicable to the requirement in question, the ready availability of technology and/or materials, the cost of compliance compared to the benefits and as a component of overall cost of development or construction, whether the requirement would have more than a de minimis impact on environmental quality under the particular circumstances, and the requirements and limitations of applicable law.

4. Exterior Light Pollution Reduction. Paragraph 7 of Section C, Article III, Part Two of Exhibit B is hereby amended to read:

All lighting fixtures to illuminate outdoor advertising shall utilize downlighting, backlighting, or internal illumination (using lamps of 100 watts or less).

5. Ozone Depletion. Paragraph 1 of Section G, Article V, Part Two of Exhibit B is hereby amended to read:

Install base building level HVAC and refrigeration equipment and fire suppression chemicals and either replace those that contain HCFCs or Halon with an available non-ozone depleting alternative, or use chemicals that might have an ozone depleting potential but nevertheless have a superior TEWI rating, or use some combination of chemicals that in the judgment of the reviewer, and based on current technology, achieves the best environmental result for this goal.

6. Certified Wood. The first sentence of Paragraph 1 of Section H, Article VI, Part Two of Exhibit B is hereby amended to read in its entirety as follows:

To the extent that the cost of such wood-based materials exceeds 5% of the total cost of the building, at least 50% of new wood-based materials must be certified in accordance

with the Forestry Stewardship Council guidelines for wood building components, including, but not limited to , structural framing and general dimensional framing, flooring, finishes, furnishings, and non-rented temporary construction applications such as bracing, concrete form work, and pedestrian barriers.

7. Development Density. The first sentence of ¶3 of Part Three of Exhibit B to the Declaration is hereby deleted, and the following substituted therefor:

No Retail project may be constructed on a Tract, other than Tracts 102, 103, and 107, that includes an occupant or a group of two or more Affiliated Occupants occupying more than 35,000 square feet of Net Floor Area used or to be used for Retail purposes. This limitation does not apply to any Public Primary Educational Facilities (as defined in Section 25-2-6(37) of the Austin City Code) and Public Secondary Educational Facilities (as defined in Section 25-2-6(38) or Safety Services Uses (as defined in Section 25-2-6(43) of the Austin City Code) on the Land. Defined terms in this paragraph not otherwise defined herein will have the meanings defined in that certain Development Agreement dated effective August 15, 2002 between the City of Austin and Circle C Land Corp. and recorded under Document No. 2002151984 of the Real Property Records of Travis County, Texas.

Tract 102 is being developed as a Convenience Storage Project as defined in and permitted by Section 7.1G of the Development Agreement. It is contemplated that Tract 103 will be developed as a Large Grocery Store as defined in and permitted by Section 7.1F of the Development Agreement.

8. Effect of Amendment. This Amendment is applicable to the Escarpment Tract only. Except as specifically amended by the provisions hereof, the terms and provisions stated in the Declaration shall continue to govern the rights and obligations of the Parties, and all provisions and covenants of the Declaration, as amended hereby, shall remain in full force and effect. The terms and provisions of the Declaration, as hereby amended, are hereby ratified and confirmed, and this Amendment and the Declaration shall be construed as one instrument. In that regard, this Amendment and the Declaration, and the contemporaneous amendment to the Development Agreement, including all exhibits to such documents, constitute the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. In the event of any inconsistency, the terms and provisions of this Amendment shall control over and modify the terms and provisions of the Declaration.

9. Miscellaneous.

a. Captions. The captions preceding the text of each section and paragraph hereof, if any, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Amendment.

b. Authority. Each party hereto has the full legal authority to execute and deliver this Amendment. In addition, the individual who executes this Amendment on behalf of each party hereto is authorized to act for and on behalf of such party and to bind such party to the terms and provisions hereof.

c. Severability. If any provision of this Amendment shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, unless enforcement of this Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this Amendment.

d. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted (pursuant to the terms of the Declaration) assigns. This Amendment shall inure to the benefit of and be binding upon each of the Parties, and their respective successors, assigns, transferees, and grantees.

e. Multiple Counterparts. Multiple copies of this Amendment may be executed by the parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument. To facilitate execution of this Amendment, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date and year first above written.

ESCARPMENT VILLAGE, L.P.,
a Texas limited partnership

By: Escarpment Village Management, L.L.C., a
Texas
limited liability company, its sole General
Partner

By: Circle C Land, L.P., a Texas limited
partnership, Manager

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

By: Stratus Properties Inc., a
Delaware
corporation, Sole Member

By:
Name:
Its:

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2004, by _____ of Stratus Properties Inc., a Delaware corporation, sole member of Circle C GP, L.L.C., a Delaware limited liability company, general partner of Circle C Land, L.P., a Texas limited partnership, manager of Escarpment Village Management, L.L.C., a Texas limited liability company, general partner of Escarpment Village, L.P., a Texas limited partnership, on behalf of such entities.

Notary Public, State of Texas

THE CITY OF AUSTIN,
a Texas municipal corporation

By: _____
Name: _____
Title: _____
Date : _____

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____,
2004, by _____, _____ of The City of Austin, a Texas
municipal corporation. on behalf of said municipal corporation

Notary Public, State of Texas

APPROVED AS TO FORM:

Assistant City Attorney

CONSENT AND SUBORDINATION OF MORTGAGEE

Comerica Bank, a Michigan banking corporation, successor by merger to Comerica Bank-Texas, is the legal owner and holder of certain indebtedness of Stratus Properties Inc., Stratus Properties Operating Co., L.P., Circle C Land Corp., and Austin 290 Properties, Inc., which is secured by, among other things, a deed of trust lien granted in a deed of trust dated December 16, 1999, from Circle C Land Corp., a Texas corporation, to Gary W. Orr, Trustee for Comerica Bank, recorded under Document No. 1999158708, Official Public Records of Travis County, Texas, and by a second lien deed of trust lien granted in a deed of trust dated December 16, 1999, from Circle C Land Corp., a Texas corporation, to Gary W. Orr, Trustee for Comerica Bank, recorded under Document No. 1999158709, Official Public Records of Travis County, Texas, and as both were modified by Modification Agreement dated December 27, 2000, recorded under Document No. 2000204551, Official Public Records of Travis County, Texas, and Document No. 00030106 (Volume 1754, Page 392), Official Public Records of Hays County, Texas, Second Modification Agreement dated December 18, 2001, recorded under Document No. 2001215158, Official Public Records of Travis County, Texas, and Document No. 01031701 (Volume 1924, Page 563), Official Public Records of Hays County, Texas, and Third Modification and Extension Agreement dated June 30, 2003, recorded under Document No. 2003237684, Official Public Records of Travis County, Texas, and further secured by a deed of trust lien granted in a second deed of trust dated September 22, 2003, from Stratus Properties Inc., Stratus Properties Operating Co., L.P., Circle C Land Corp., Austin 290 Properties, Inc., Stratus 7000 West Joint Venture and Lantana Office Properties I, L.P., to Melinda Chausse, Trustee for Comerica Bank, recorded under Document No. 2003237682, Official Public Records of Travis County, Texas, and a deed of trust lien granted in a subordinate deed of trust dated February 27, 2004, from Stratus Properties Inc., Stratus Properties Operating Co., L.P., Circle C Land, L.P., Austin 290 Properties, Inc., Stratus 7000 West Joint Venture and Lantana Office Properties I, L.P., to Melinda Chausse, Trustee for Comerica Bank, recorded under Document No. 2004047013, Official Public Records of Travis County, Texas (collectively and as modified, the "Deed of Trust").

Comerica Bank hereby joins in this Amendment for the sole purpose of consenting to the Amendment and subordinating the Deed of Trust and all other liens it may have securing such indebtedness, to the Amendment and the interests of the City of Austin, and its successors and assigns, in and to the Amendment. The undersigned has the authority to execute this Consent and Subordination on behalf of Comerica Bank and represents, in that regard, that all corporate action has been taken by Comerica Bank to make this a binding Consent and Subordination.

COMERICA BANK,
a Michigan banking corporation, successor
by
merger to Comerica Bank-Texas

By:

Shery R. Layne, Senior Vice President

THE STATE OF TEXAS §
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COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of ____, 2004, by Shery R. Layne, Senior Vice President of Comerica Bank, a Michigan banking corporation, successor by merger to Comerica Bank-Texas, on behalf of said banking corporation.

Notary Public Signature

(seal)