

STRATUS PROPERTIES INC  
Form DFAN14A  
May 10, 2016

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 14A**  
**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under § 240.14a-12

**Stratus Properties Inc.**

**(Name of Registrant as Specified In Its Charter)**

**Carl Berg, David M. Dean and Michael Knapp**

**(Name(s) of Person(s) Filing Proxy Statement, if other than the Registrant)**

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 13D**  
**Under the Securities Exchange Act of 1934**  
**(Amendment No. 6)\*<sup>1</sup>**

**STRATUS PROPERTIES INC.**

**(Name of Issuer)**

**Common Stock, \$0.01 par value**

**(Title of Class of Securities)**

**863167201**

**(CUSIP Number)**

**Carl E. Berg**

**10050 Bandlely Drive**

**Cupertino, California 95014**

**(408) 725-0700**

**(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)**

**May 5, 2016**

**(Date of Event which Requires Filing of this Statement)**

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), (f) or (g), check the following box. x<sup>2</sup>

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 ( Act ) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

<sup>1</sup> The reporting persons named in the cover pages to this Schedule 13D may be deemed to be a group for purposes of Section 13(d) of the Act and the rules thereunder in accordance with the provisions of Rule 13d-3(b)(1). This is the second Schedule 13D filing by such reporting persons as a group. This Schedule 13D filing is also Amendment No. 6 to the Schedule 13D of Carl E. Berg, which Schedule 13D was originally filed with the Securities and Exchange Commission on January 11, 2012 and has been amended from time to time thereafter ( Amendment No. 6 ).

<sup>2</sup> The box in this paragraph is checked solely with respect to this Schedule 13D as Amendment No. 6.

**SCHEDULE 13D**

CUSIP No. 863167201

1 NAME OF REPORTING PERSON

I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

Carl E. Berg

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

PF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 1,421,002 (See Item 5)

8 SHARED VOTING POWER

OWNED BY

EACH

0 (See Item 5)

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH 1,421,002 (See Item 5)  
10 SHARED DISPOSITIVE POWER

0 (See Item 5)  
11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,421,002 (See Item 5)  
12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES "

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

17.6% (1) (See Item 5)  
14 TYPE OF REPORTING PERSON

IN

(1) The percentage is based upon 8,092,140 shares of Issuer's common stock outstanding as of March 31, 2016, as reported in the Issuer's Definitive Proxy Statement contained in the Issuer's Schedule 14A information filed with the Securities and Exchange Commission (the Commission) on April 15, 2016 (the Company Proxy Statement).

CUSIP No. 863167201

1 NAME OF REPORTING PERSON

I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

David M. Dean

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO(1)

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 45,000 (See Item 5)

8 SHARED VOTING POWER

OWNED BY

EACH

0 (See Item 5)

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH 45,000 (See Item 5)

10 SHARED DISPOSITIVE POWER



0 (See Item 5)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

45,000 (See Item 5)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0.56% (2)(See Item 5)

14 TYPE OF REPORTING PERSON

IN

- (1) Mr. Dean is being reported to be the beneficial owner of the 45,000 shares of Issuer's common stock reported on this cover page in accordance with Rule 13d-3(d)(1)(i). See Item 5 for information regarding Mr. Dean's proposed purchase of the shares of Issuer's common stock reported on this cover page from Mr. Berg out of the shares of Issuer's common stock beneficially owned by Mr. Berg and reported on the immediately preceding cover page.
- (2) The percentage is based upon 8,092,140 shares of Issuer's common stock outstanding as of March 31, 2016, as reported in the Company Proxy Statement.

CUSIP No. 863167201

1 NAME OF REPORTING PERSON

I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

Michael Knapp

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

Not Applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 0

8 SHARED VOTING POWER

OWNED BY

EACH

0 (See Item 5)

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH 0

10 SHARED DISPOSITIVE POWER

0 (See Item 5)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

0 (See Item 5)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES "

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

(See Item 5)

14 TYPE OF REPORTING PERSON

IN

This Schedule 13D is jointly filed by Mr. Carl E. Berg, Mr. David M. Dean and Mr. Michael Knapp, who may be deemed to constitute a group under Section 13(d) of the Act and Rule 13d-3(b)(1) under the Act with respect to the shares of the class of common stock, par value \$0.01 per share, of Stratus Properties Inc., a Delaware corporation ( Common Stock ), reported on the cover pages hereof. This Schedule 13D also amends the Schedule 13D originally filed by Mr. Berg with the Securities and Exchange Commission (the SEC ) on January 11, 2012 (the Initial Berg Schedule 13D ), as amended by Amendment No. 1 to Schedule 13D filed on January 12, 2012, Amendment No. 2 to Schedule 13D filed on February 26, 2015, Amendment No. 3 to Schedule 13D filed on December 21, 2015, Amendment No. 4 to Schedule 13D filed on December 30, 2015 and Amendment No. 5 to Schedule 13D filed on January 15, 2016 (the Initial Berg Schedule 13D as amended by such amendments thereto, the Berg Schedule 13D ), with respect to the shares of Common Stock beneficially owned by Mr. Berg.

All information disclosed in this Schedule 13D is stated as of the date of this Schedule 13D. The Reporting Persons do not undertake to update any of the information contained in this Schedule 13D except as and to the extent required by applicable law.

Item 1. Security and Issuer.

This Statement on Schedule 13D (this Schedule 13D ) relates to shares of Common Stock, the issuer of which is Stratus Properties Inc., a Delaware corporation (the Issuer ), whose principal executive offices are located at 212 Lavaca St., Suite 300, Austin, TX 78701.

Item 2. Identity and Background.

(a) This statement is jointly filed by:

- (i) Carl E. Berg ( Mr. Berg ), as a stockholder of the Issuer and beneficial owner of shares of the Issuer s common stock;
- (ii) David M. Dean ( Mr. Dean ), as a nominee for election as a director of the Issuer and to serve on the Board of Directors of the Issuer (the Board ) and as a beneficial owner of shares of Issuer s common stock; and
- (iii) Michael Knapp ( Mr. Knapp ), as a nominee for election as a director of the Issuer and to serve on the Board.

Each of the foregoing is referred to herein as a Reporting Person and the foregoing are referred to herein collectively as the Reporting Persons.

The Reporting Persons have agreed to Mr. Berg nominating Mr. Dean and Mr. Knapp for election as directors of the Issuer and to serve on the Board and that Mr. Dean and Mr. Knapp will serve as directors of the Issuer and on the Board if elected. The Reporting Persons have also agreed to act cooperatively to seek the election of Mr. Dean and Mr. Knapp as directors of the Issuer. In connection with the foregoing, the Reporting Person have entered into a Joint Filing and Solicitation Agreement dated January 14, 2016 that is more specifically described in Item 6 of this Schedule 13D appearing below (the Joint Solicitation Agreement ). As a result, the Reporting Persons may be deemed to form a group for purposes of Section 13(d) of the Act and the rules thereunder (the Group ). Accordingly, the

Reporting Persons are hereby filing a joint Schedule 13D.

In addition, Mr. Dean agreed to purchase 45,000 shares of Common Stock from Mr. Berg, subject to the terms and conditions (including but not limited to the grant by Mr. Dean of a call option in favor of Mr. Berg) of a Stock Purchase and Option Agreement between Mr. Dean and Mr. Berg dated May 5, 2016 (the Stock Purchase and Option Agreement ).

(b) Mr. Berg's principal business address is 10050 Bandley Drive, Cupertino, CA 95014. Mr. Dean's principal business address is 16200 Addison Road, Suite 250, Addison, TX 75001. Mr. Knapp's principal business address is 10050 Bandley Drive, Cupertino, CA 95014.

(c) Mr. Berg is a managing member and primary owner of Berg & Berg Enterprises, LLC, an investment and real estate development company, whose principal executive offices are located at 10050 Bandley Drive, Cupertino, CA 95014. Mr. Dean's principal employment is serving as the Chief Operating Officer of Lincoln Capital Management, LLC, an organization that specializes in providing bridge financing incident to the U.S. Small Business Administration's 504 real estate loan program, whose principal executive offices are located at 16200 Addison Road, Suite 250, Addison, TX 75001. Mr. Knapp's principal employment is serving as the manager of Berg & Berg Enterprises, LLC, an investment and real estate development company, whose principal executive offices are located at 10050 Bandley Drive, Cupertino, CA 95014.

(d) No Reporting Person has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) None of the Reporting Persons has, during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) Each of Messrs. Berg, Dean and Knapp is a citizen of the United States of America.

**Item 3. Source and Amount of Funds or Other Consideration.**

Mr. Berg purchased 1,421,002 shares of Common Stock with his personal funds for an aggregate purchase price of \$12,703,739.39. Mr. Berg has agreed to sell to Mr. Dean and Mr. Dean has agreed to purchase 45,000 of those shares of Common Stock for an aggregate price of \$810,000, subject to the terms and conditions of the Stock Purchase and Option Agreement. Despite the sale of the such shares, in accordance with Rule 13d-3(b)(1) under the Act, for purposes of Section 13(d) or Section 13(g) of the Act and the rules thereunder, Mr. Berg may be deemed to continue to beneficially own a total of 1,421,002 shares of Common Stock as a member of the Group after the consummation of the sale of 45,000 shares of Common Stock.

Mr. Dean agreed to purchase 45,000 shares of Common Stock from Mr. Berg with his personal funds for an aggregate purchase price of \$810,000, subject to the terms and conditions of the Stock Purchase and Option Agreement. In accordance with Rule 13d-3(b)(1) under the Act, for purposes of Section 13(d) or Section 13(g) of the Act and the rules thereunder, Mr. Dean may be deemed to beneficially own a total of 1,421,002 shares of Common Stock as a member of the Group along with Mr. Berg and Mr. Knapp, including the 45,000 shares of Common Stock he will purchase from Mr. Berg.

Mr. Knapp does not beneficially own any shares of Common Stock except as, in accordance with the provisions of Rule 13d-3(b)(1) under the Act, Mr. Knapp may be deemed to beneficially own a total of 1,421,002 shares of Common Stock for purposes of Section 13(d) of the Act and the rules thereunder as a result of being part of the Group along with Mr. Berg and Mr. Dean.

See Item 6 of this Schedule 13D for information regarding the Stock Purchase and Option Agreement and Mr. Berg's proposed sale to Mr. Dean of 45,000 shares of Common Stock, which information is incorporated by reference into this Item 3.

Item 4. Purpose of Transaction.

Mr. Berg acquired 1,421,002 shares of Common Stock during the period from July 1997 through December 2001. He acquired these shares because he believed that such shares of Common Stock represented an attractive investment opportunity. However, he was concerned with the adequacy and enforcement of the Issuer's corporate governance policies and practices. He intended to express his views regarding the need for improved corporate governance to the Board and the management of the Issuer.

In the Initial Berg Schedule 13D, Mr. Berg disclosed his intent to engage in discussions with management, the Board, and other stockholders of the Issuer and other relevant parties concerning the business, management, operations, assets, capitalization, financial condition, governance, board composition, strategy and future plans of the Issuer, which discussions he expected to include proposing or considering one or more of the actions described in paragraphs (a) through (j) of Item 4 of Schedule 13D as set forth in Rule 13d-101 of the Act ( SEC Schedule 13D ). In addition, Mr. Berg disclosed his intent to discuss the composition of the Board, including the addition to the Board of persons suggested or nominated by Mr. Berg for election to the Board and to take actions to cause the election of one or more individuals nominated by Mr. Berg for election to the Board. Mr. Berg's intentions in regard to such matters have not changed.

On January 10, 2012, Mr. Berg submitted to the Issuer notice of his intention to nominate one director for election to the Board at the Issuer's 2012 Annual Meeting of Stockholders (the 2012 Annual Meeting ). Mr. Berg was prepared to take such actions, including the solicitation of proxies, as he considered appropriate or necessary to elect his nominee to the Board pursuant to the Issuer's charter documents, Delaware law and the federal securities laws.

In connection with Mr. Berg's nomination of one director for election to the Board at the 2012 Annual Meeting, he entered into a separate nomination agreement with Mr. William H. Lenehan IV ( Mr. Lenehan ). In response to Mr. Berg's nomination of Mr. Lenehan, the Issuer itself nominated Mr. Lenehan for election as a director at the 2012 Annual Meeting, and Mr. Lenehan was elected as a director at the 2012 Annual Meeting to serve a three-year term. Mr. Lenehan served as a director of the Issuer for such term, but was not nominated to stand for re-election as a director of the Issuer at the Issuer's annual meeting of stockholders held on May 7, 2015. Thus, Mr. Lenehan ceased to be a director of the Issuer on that date.





To pursue further discussions with management, the Board, and other stockholders of the Issuer, Mr. Berg sent a letter to the Chairman of the Board of the Issuer and the Board on or about February 20, 2015, a copy of which was attached as Exhibit 1 to Amendment No. 2 to Schedule 13D filed by Mr. Berg on February 20, 2015 to amend the Berg Schedule 13D. Such letter acknowledged receipt from the Issuer of a draft of a standstill agreement proposed by the Issuer that would have imposed certain restrictions on Mr. Berg's activities as a stockholder of the Issuer in return for certain concessions being made to Mr. Berg. Such letter also expressed certain concerns Mr. Berg had with the Issuer and its corporate governance, management and operations. The Issuer and Mr. Berg have not entered into any standstill agreement.

In furtherance of Mr. Berg's purposes for his ownership of shares of Common Stock, in particular the stated purpose of submission of proposals regarding an extraordinary transaction, such as a merger, involving the Issuer (as contemplated by paragraph (b) of Item 4 of SEC Schedule 13D) and the stated purpose of the addition of persons suggested or nominated by Mr. Berg to the Board of the Issuer, on December 8, 2015, pursuant to Rule 14a-8 under the Act, Mr. Berg submitted a letter to the Corporate Secretary of the Issuer (the Proposal Letter), which included a Stockholder Proposal (the Proposal) for inclusion in the Issuer's proxy materials relating to the Issuer's 2016 Annual Meeting of Stockholders (the 2016 Annual Meeting). The Proposal requested that the Issuer's Board immediately engage a nationally recognized investment banking firm to explore the prompt sale, merger or other business combination of the Issuer. The Proposal included a supporting statement indicating why Mr. Berg was submitting the Proposal to the Issuer and believed stockholders of the Issuer should vote in favor of the Proposal at the 2016 Annual Meeting. In addition, Mr. Berg informed the Issuer that he intended to nominate two persons for election as directors of the Issuer at the 2016 Annual Meeting in accordance with his rights as a stockholder under Article IV, Section 11 of the Issuer's Bylaws. A copy of the Proposal Letter, including the attachments thereto, which attachments include a copy of the Proposal, was furnished as Exhibit 1 to Amendment No. 3 to Schedule 13D filed by Mr. Berg on December 8, 2015 to amend the Berg Schedule 13D and was attached as Exhibit 1 to Amendment No. 5 to Schedule 13D filed by the Reporting Persons on January 15, 2016 and incorporated by reference herein.

On December 19, 2015, in furtherance of Mr. Berg's purposes of his ownership of shares of Common Stock, in particular the stated purpose of submission of proposals regarding an extraordinary transaction, such as a merger, involving the Issuer (as contemplated by subsection (b) of Item 4 of Schedule 13D of the SEC), Mr. Berg sent by electronic mail a combined letter (the Combined Letter) to Messrs. James E. Joseph and John G. Wenker, two individuals who the Board had recently appointed to the Board to fill vacancies on the Board created when the Board acted to increase the number of directors of the Issuer. The Combined Letter primarily discussed aspects of Issuer's operations and financial performance intended to inform Messrs. Joseph and Wenker of reasons behind Mr. Berg's submission to the Issuer of the Proposal on December 8, 2015 and the background of the Proposal, and to ensure that Messrs. Joseph and Wenker were informed about how, at least from Mr. Berg's perspective, the Issuer's board and management had historically operated. A copy of the Combined Letter, including the attachments thereto, which attachments include a copy of the stockholder proposal package submitted by Mr. Berg on December 8, 2015, was furnished as Exhibit 1 to Amendment No. 4 to Schedule 13D filed by Mr. Berg on December 30, 2015 to amend the Berg Schedule 13D and was attached as Exhibit 2 to Amendment No. 5 to Schedule 13D filed by the Reporting Persons on January 15, 2016 and incorporated by reference herein.

On January 8, 2016, Mr. Berg delivered to the Issuer a written notice (the "Written Notice") to the Secretary of the Issuer by which he nominated Mr. Dean and Mr. Knapp for election as directors of the Issuer at the Issuer's 2016 Annual Meeting, pursuant to Article IV, Section 11 of the Issuer's bylaws. Each of Mr. Dean and Mr. Knapp consented on January 7, 2016 to being named as a nominee for election as a director of the Issuer at the Issuer's 2016 Annual Meeting, to be named as a nominee in the proxy statement of Mr. Berg, the proxy statement of any group of stockholders of the Issuer, the proxy statement of the Issuer and on the related proxy cards and to serve as a director of the Issuer and on the Board if elected. A copy of the Written Notice, including the exhibits thereto, which included the nominees' consents and the information concerning the nominees, was furnished as Exhibit 3 to Amendment No. 5 to Schedule 13D filed by the Reporting Persons on January 15, 2016 and incorporated by reference herein.

On January 8, 2016, Mr. Berg sent a letter by electronic mail to each member of the Board expressing Mr. Berg's concerns regarding the renewal of the change-in-control agreements between the Issuer and Mr. William H. Armstrong III, the Issuer's chief executive officer, and between the Issuer and Ms. Erin D. Pickens, the Issuer's chief financial officer (the "Change-in-Control Agreements Letter"). A copy of the Change-in-Control Agreements Letter was furnished as Exhibit 4 to Amendment No. 5 to Schedule 13D filed by the Reporting Persons on January 15, 2016 and incorporated by reference herein.

In connection with Mr. Dean's decision to agree to accept nomination for election to the Board, Mr. Berg and Mr. Dean in January 2016 reached a non-binding agreement in principle with respect to a sale by Mr. Berg to Mr. Dean of 45,000 shares of Common Stock at a purchase price of \$18.00 per share at an indeterminate time in the future and on certain other terms to be negotiated. On May 5, 2016, Mr. Dean and Mr. Berg entered into the Stock Purchase and Option Agreement pursuant to which Mr. Dean will purchase from Mr. Berg 45,000 shares of Common Stock at \$18.00 per share, or \$810,000 in the aggregate, in exchange for a non-recourse promissory note in the principal amount of the aggregate purchase price, secured by the purchased shares of Common Stock, and maturing on the third anniversary of the note's date of issuance, and requiring interest-only quarterly payments prior to maturity. Mr. Berg will have the option to repurchase the shares at the original sales price of \$18.00 per share if Mr. Dean fails to serve a full three-year term as director, with the option lapsing as to one-third of the shares each June 30 beginning June 30, 2017. In addition, Mr. Berg will have the option to repurchase one-third of the shares (15,000) if, at the end of Mr. Dean's three-year term as director, the Issuer has not been sold, merged or combined with another company or has not sold all or substantially all of its assets. If at any time during Mr. Dean's three-year term the Issuer is sold, merged or combined with another company, or sells all or substantially all of its assets, in a transaction approved by the stockholders of the Issuer, Mr. Berg's option shall lapse entirely.

No Reporting Person has any present plan or proposal that would relate to or result in any of the matters set forth in subparagraphs (a) through (j) of Item 4 of Schedule 13D except as set forth herein or such as would occur upon or in connection with completion of, or following, any actions, events or occurrences of the types discussed herein or as set forth in paragraphs (a) through (j) of Item 4 of SEC Schedule 13D. Mr. Berg intends to review his investment in Common Stock on a continuing basis, and each of the other Reporting Persons intends to review whether he will acquire

any shares of Common Stock after the date of this Schedule 13D and, if he does acquire any shares of Common Stock, intends to review any such investment in Common Stock on a continuing basis after such acquisition is consummated.

The Reporting Persons, individually or acting together, may in the future exercise any and all of rights they may have as stockholders of the Issuer in a manner consistent with their equity interests in the Issuer. Depending on various factors including, without limitation, the Issuer's financial position, results of operations, cash flows, actions regarding the real properties in its real estate portfolio and investment strategy, Common Stock prices, conditions in the securities markets, whether any offer has been made by a third party to acquire the Issuer or the outstanding shares of Common Stock, the terms and conditions of any offer that is made by a third party to acquire the Issuer or the outstanding shares of Common Stock, general economic and industry conditions and any other factors identified and deemed pertinent by the Reporting Persons, the Reporting Persons, individually or acting together, may, subject to the terms of the Joint Solicitation Agreement, in the future take such actions with respect to the Issuer and the shares of Common Stock they or any of them hold as any or all of them deems appropriate, including, without limitation, one or more of the following: (i) engaging in, and continuing to engage in, communications and discussions with, and making recommendations, suggestions and proposals to, management of the Issuer and one or more members of the Board, including Mr. Dean and Mr. Knapp in their capacities as directors of the Issuer if they are elected as directors of the Issuer at the 2016 Annual Meeting, stockholders of the Issuer and other interested parties, including potential acquirers of the Issuer, in each case, directly or through representatives, whether by press release, letter or other oral, written or electronic communication, in person or otherwise, regarding (1) the value of the Issuer's securities and ways to increase stockholder value for the stockholders of the Issuer, (2) the Issuer's business, management, operational performance, portfolio of real properties, other investments, operations, assets, indebtedness and other liabilities (including the terms thereof and the security therefor, if any), cash flows, capitalization, executive compensation, change-in-control agreements, the Issuer's stockholder rights plan (i.e., its poison pill), other corporate governance provisions and practices of the Issuer and its management that are unfriendly to stockholders of the Issuer who are not insiders of the Issuer, financial condition, results of operations, financial performance, ownership structure, corporate governance, Board structure and composition, strategy and future plans and suggestions for changes and improvements thereto, (3) liquidation of the Issuer's assets or one or more properties included in those assets with a distribution of the proceeds of the sale of those assets to the Issuer's stockholders and (4) such other matters as any or all of the Reporting Persons may determine; (ii) purchasing shares of Common Stock or, in the case of Mr. Berg, purchasing additional shares of Common Stock, selling shares of Common Stock, engaging in short selling of or any hedging or similar transaction with respect to shares of Common Stock; (iii) soliciting proxies from stockholders of the Issuer for voting at the 2016 Annual Meeting (a) in favor of (1) the election of Messrs. Dean and Knapp as directors of the Issuer, and (2) the Proposal and (b) as the Reporting Persons or a Reporting Person may deem appropriate on other items of business to come before the stockholders of the Issuer for a vote at the 2016 Annual Meeting; (iv) discussing with one or more interested persons the possibility of making an offer to acquire the Issuer in an extraordinary transaction, including by means of a merger, and the terms of any offer that might be made; (v) seeking to obtain from one or more interested person an offer or offers to acquire the Issuer in an extraordinary transaction, including by means of a merger; (vi) seeking to effect or cause to occur or to have the Issuer engage in or cause to occur with respect to the Issuer one or more of the actions, events and occurrences set forth in paragraphs (a) through (j) of Item 4 of SEC Schedule 13D or to have the Issuer engage in the consideration, acceptance, rejection, negotiation,

entry into and consummation of any transaction relating to an extraordinary transaction, including a merger, resulting in the sale of the Issuer; or (vii) changing their intentions with respect to any or all matters referred to in this Item 4 of this Section 13D.

Item 5. Interest in Securities of the Issuer.

(a) - (c) Mr. Berg is the beneficial owner of 1,421,002 shares of Common Stock, representing approximately 17.6% of the shares of Common Stock outstanding, based on 8,092,140 shares of Common Stock outstanding as of March 31, 2016, as reported in the Company Proxy Statement. Such shares of Common Stock include 16,002 shares of Common Stock that Mr. Berg recently determined were inadvertently not included in the shares of Common Stock previously reported in the Berg Schedule 13D as being beneficially owned by Mr. Berg. These shares also include 45,000 shares to be held by Mr. Dean pursuant to the Stock Purchase and Option Agreement which entitles Mr. Berg the right to repurchase such shares under certain circumstances. Despite the sale of the such shares, in accordance with Rule 13d-3(b)(1) under the Act, for purposes of Section 13(d) or Section 13(g) of the Act and the rules thereunder, Mr. Berg may be deemed to beneficially own a total of 1,421,002 shares of Common Stock as a member of the Group after the sale of 45,000 shares of Common Stock.

Mr. Dean will be the beneficial owner of 45,000 shares of Common Stock, representing approximately 0.56% of the shares of Common Stock outstanding, based on 8,092,140 shares of Common Stock outstanding as of March 31, 2016, as reported in the Company Proxy Statement. These shares are subject to the terms and conditions of the Stock Purchase and Option Agreement, pursuant to which Mr. Berg has the right to repurchase such shares under certain circumstances. In addition, in accordance with Rule 13d-3(b)(1) under the Act, for purposes of Section 13(d) or Section 13(g) of the Act and the rules thereunder, Mr. Dean may be deemed to beneficially own a total of 1,421,002 shares of Common Stock as a member of the Group.

Mr. Knapp does not beneficially own any shares of Common Stock, except that in accordance with Rule 13d-3(b)(1) under the Act, for purposes of Section 13(d) or Section 13(g) of the Act and the rules thereunder, Mr. Knapp may be deemed to beneficially own a total of 1,421,002 shares of Common Stock as a member of the Group. Mr. Knapp expressly disclaims beneficial ownership of any of the shares of Common Stock and expressly declares that the filing of this Schedule 13D and any amendment hereto shall not be construed as an admission by him that he is the beneficial owner of any of the shares of Common Stock.

The Reporting Persons collectively may be deemed to beneficially own an aggregate of 1,421,002 shares of Common Stock, constituting approximately 17.6% of the shares of Common Stock outstanding, based on 8,092,140 shares of Common Stock outstanding as of March 31, 2016, as reported in the Company Proxy Statement.

Mr. Knapp does not have either sole or shared power to vote or to direct the voting of, or sole or shared power to dispose of or to direct the disposition of, any of the shares of Common Stock. Mr. Berg retains the sole power to vote or to direct the voting of, and the sole power to dispose of or to direct the disposition of, 1,421,002 shares of Common Stock before the sale of 45,000 shares to Mr. Dean, and 1,376,002 shares of Common Stock after the sale of 45,000 shares to Mr. Dean. Mr. Dean retains the sole power to vote or to direct the voting of, and the sole power to dispose of or to direct the disposition of, 45,000 shares of Common Stock after the purchase of such shares from Mr. Berg.

See Item 6 of this Schedule 13D for information regarding Mr. Berg's sale to Mr. Dean of 45,000 shares of Common Stock, which information is incorporated by reference in this Item 5.

Except as otherwise disclosed in this Schedule 13D, none of the Reporting Persons has engaged in any transaction in shares of Common Stock during the past sixty days.

(d) None of the Reporting Persons has knowledge of any person who has the right to receive, or the power to direct the receipt of dividends from, or proceeds from the sale of, the shares of Common Stock other than Mr. Berg and, after Mr. Dean's purchase of Common Stock from Mr. Berg, Mr. Dean.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

On January 13, 2016, the Reporting Persons entered into the Joint Solicitation Agreement which governs, among other matters, the joint filing of Schedule 13D for such parties in connection with seeking to have Mr. Dean and Mr. Knapp elected as directors of the Issuer at the 2016 Annual Meeting and taking actions necessary to achieve that goal, including the solicitation of proxies from stockholders of the Issuer and the coordination and oversight of communications by one or more of the Reporting Persons with the Issuer and other persons relating to that goal. Nothing in such agreement gives Mr. Berg any control over the manner in which Mr. Dean or Mr. Knapp will discharge his duties as a director of the Issuer or provides Mr. Dean or Mr. Knapp any power to vote or to direct the vote of, or any power to dispose of or to direct the disposition of, any of the shares of Common Stock. A copy of the Joint Solicitation Agreement was furnished as Exhibit 5 to Amendment No. 5 to Schedule 13D filed by the Reporting Persons on January 15, 2016 and incorporated by reference in this Item 6.

On May 5, 2016, Mr. Dean and Mr. Berg entered into the Stock Purchase and Option Agreement pursuant to which Mr. Dean will purchase from Mr. Berg 45,000 shares of Common Stock at \$18.00 per share, or \$810,000 in the aggregate, in exchange for a non-recourse promissory note in the principal amount of the aggregate purchase price, secured by the purchased shares of Common Stock, maturing on the third anniversary of the note's date of issuance, and requiring interest-only quarterly payments prior to maturity. Mr. Berg will have the option to repurchase the shares at the original sales price of \$18.00 if Mr. Dean fails to serve a full three-year term as director, with the option lapsing as to one-third of the shares each June 30 beginning June 30, 2017. In addition, Mr. Berg will have the option to repurchase one-third of the shares (15,000) if, at the end of Mr. Dean's three-year term as director, the Issuer has not been sold, merged or combined with another company or has not sold all or substantially all of its assets. If at any time during Mr. Dean's three-year term the Issuer is sold, merged or combined with another company, or sells all or substantially all of its assets, in a transaction approved by the stockholders of the Issuer, Mr. Berg's option shall lapse entirely. A copy of the Stock Purchase and Option Agreement is furnished herewith as Exhibit 1 and incorporated by reference in this Item 6.

Item 7. Material to be Filed as Exhibits.

Ex. Document

1 Stock Purchase and Option Agreement, dated May 5, 2016, between Carl E. Berg and David M. Dean

*[Signature page follows.]*

SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: May 9, 2016

REPORTING PERSONS:

/s/ Carl E. Berg  
Name: Carl E. Berg

/s/ David M. Dean  
Name: David M. Dean

/s/ Michael Knapp  
Name: Michael Knapp

## STOCK PURCHASE AND OPTION AGREEMENT

STOCK PURCHASE AND OPTION AGREEMENT (the Agreement ) executed as of May 5, 2016 (the Effective Date ) by and between CARL E. BERG (the Seller ), and DAVID M. DEAN (the Purchaser ).

WHEREAS, the Seller is the beneficial owner of 1,421,002 shares of the Common Stock (the Stratus Common Stock ) of Stratus Properties, Inc., a Delaware corporation (the Company ), of which 700 are held of record in the Seller's name and the remaining 1,420,302 are held by J.P. Morgan Clearing Corp. (the Intermediary ) for the securities account of the Seller; the Seller acquired all of those shares through open-market purchases and has held all of those shares for more than ten years; and those shares represent approximately 17.6% of the 8,092,140 shares of Stratus Common Stock outstanding; and

WHEREAS, the Seller and the Purchaser, along with Michael Knapp, entered into that Joint Solicitation Agreement dated January 14, 2016 (the Joint Solicitation Agreement ) for the purpose therein stated and accordingly filed with the Securities and Exchange Commission (the SEC ) that certain Schedule 13D amendment dated January 15, 2016 relating to the Stratus Common Stock (the 13D Statement ); and

WHEREAS, as reflected in the 13D Statement, the Seller and the Purchaser had reached an agreement in principle (on January 6, 2016) with respect to the number of shares (45,000) of Stratus Common Stock to be sold by the Seller to the Purchaser and the sale price per share (\$18), but the time of the sale and purchase and certain other terms and conditions (including but not limited to a call option in favor of the Purchaser) remained to be determined in the future using the agreement in principle as a framework; and

WHEREAS, as described in the 13D Statement, the Seller and the Purchaser have an understanding regarding the Seller's selling to the Purchaser 45,000 shares of the Stratus Common Stock owned by the Seller, subject to other terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual representations, warranties, covenants, and agreements herein contained, the parties hereto agree as follows:

### 1. Purchase and Sale of Shares.

*1.1 Purchase and Sale of the Shares.* On the basis of the representations, warranties, covenants and agreements contained in this Agreement, and subject to the terms and conditions of this Agreement, the Seller agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the Seller, 45,000 shares (the Shares ) of the Common Stock, for an aggregate purchase price of Eight Hundred Ten Thousand Dollars (\$810,000) (the Purchase Price ).

*1.2 Payment of Purchase Price and Delivery of Shares.* Within five business days following the Effective Date, the Purchaser shall execute and deliver to the Seller a promissory note as described in Schedule A-1 (the Note ) and a Security Agreement as described in Schedule A-2 (the Security Agreement ) in payment of the Purchase Price, and within five business days following receipt of the Note and the Security Agreement, the Seller shall issue an irrevocable entitlement order to the Intermediary to transfer the Shares from the Seller's securities account at the Intermediary to the Purchaser's securities account at the Intermediary (the Purchaser agreeing to open a securities account at the Intermediary as promptly as possible after the Effective Date). The Seller's obligation to issue that entitlement order is subject to his receipt of the Note and Security Agreement fully executed by the Purchaser. Issuance of an effective entitlement order shall constitute delivery of the Shares to the Purchaser and the date that an effective entitlement order is issued is the Delivery Date. The Shares upon the Delivery Date shall be free and clear of all



liens, encumbrances, and pledges created by the Seller ( Liens ) other than Liens created by this Agreement (and except that no representation is made by the Seller to the Purchaser regarding whether or not the Shares, in the hands of the Purchaser, may or may not be deemed to be restricted securities as that term is defined by Rule 144 promulgated under the Shares Act of 1933, as amended (the Securities Act )).

2. Option in Favor of the Seller to Repurchase Shares.

2.1 *Grant of Option; Condition to Seller's Agreement; Certain Definitions.*

(a) The Purchaser hereby grants to the Seller an option (the Option) (which shall take effect immediately and without further action upon the Delivery Date) to repurchase the Shares on the terms set forth in this Section 2.

(b) The Purchaser acknowledges that the Option to repurchase the Shares is a material inducement to and condition of the Seller entering into this Agreement and agreeing to sell the Shares to the Purchaser, and that without the Option to repurchase the Shares, the Seller would not agree to sell the Shares to the Purchaser.

(c) Option Share and Option Shares refer to those Shares subject from time to time to the Option; whenever Shares cease to be subject to the Option, such Shares will cease to be Option Shares. Initial Option Period means that period of time commencing the Delivery Date and ending on the date the Purchaser is elected to the Board of Directors of Stratus in 2016. Subject to adjustment as provided below, First Option Period means that period of time commencing on the Delivery Date and ending on June 30, 2017; Second Option Period means that period of time commencing on the Delivery Date and ending on June 30, 2018; and Third Option Period means that period of time commencing on the Delivery Date and ending on June 30, 2019; provided, however, that the ending date of any of the First, Second or Third Option Periods shall be accelerated or postponed as necessary to cause such ending date to be the final day of the month in which Stratus holds its annual meeting of shareholders for such year and at which directors are elected. A Capital Event shall occur if and when Stratus is sold, merged or combined with another company, or Stratus sells all or substantially all of its assets, pursuant to a transaction approved by the stockholders of Stratus. A Service Cessation shall occur if (a) as of the end of the Initial Option Period, the Purchaser has ceased to be a nominee for election to the Board of Directors of Stratus or, if elected a director, has declined to assume that office, and (b) as of the end of the First, the Second or the Third Option Period, as applicable, the Purchaser is not serving as a member of the Board of Directors of Stratus.

2.2 *Exercise Price; Option Trigger Events.* The purchase price for each Option Share shall be \$18.00 per Option Share, subject to adjustment as provided in Section 2.5 (Exercise Price). Subject to the following provisos, the Option shall become exercisable (a) upon occurrence of a Service Cessation Event or (b) if no Capital Event shall have occurred by the original expiration date of the Third Option Period (each an Option Exercise Event); provided, that a Service Cessation resulting from the occurrence of a Capital Event shall NOT constitute an Option Exercise Event and provided further, that the Option shall lapse upon the occurrence of a Capital Event prior to the original expiration date of the Third Option Period.

2.3 *Option Shares Subject to Repurchase in each Option Period; Termination of Option.* The Option will be exercisable, in accordance with the terms of this Agreement, with respect to the following Option Shares during the following Option Periods:

Initial Option Period:	All (45,000) of the Shares
First Option Period:	All (45,000) of the Shares
Second Option Period:	Two-thirds (30,000) of the Shares
Third Option Period:	One-third (15,000) of the Shares

The Option shall expire at 5 p.m., Fort Worth, Texas time, on the last day of the Third Option Period, if not exercised by prior to that time.

2.4 *Manner of Exercise; Closing Date Defined.* The Seller may exercise the Option in whole (that is, with respect to all of the Option Shares then subject to the Option) but not in part, following the occurrence of an Option Exercise

Event. To exercise the Option, the Seller shall deliver to the Purchaser written notice of such exercise within 60 days following the end of the Option Period in which the Option Exercise Event occurred; the Option shall not be deemed exercised until such notice is actually received by the Purchaser (the date on which such notice is actually received is called the Exercise Date ). Thereafter on a date mutually agreed upon by the Seller and the Purchaser (which shall not be later than ten business days following the Exercise Date), (a) the Seller shall

deliver to the Purchaser the Aggregate Exercise Price in immediately available cash funds by wire transfer to an account designated in writing by the Purchaser, and (b) simultaneously the Purchaser shall issue an irrevocable entitlement order to the Intermediary to transfer the Shares from the Seller's securities account at the Intermediary to the Purchaser's securities account at the Intermediary. The Aggregate Exercise Price shall mean the amount calculated as (a) the product realized by multiplying the Exercise Price then in effect times the number of Option Shares then subject to the Option, minus (offset against) (b) the then outstanding balance of the Note, and minus (c) the sum of Post-Event Cash Distributions attributable to the Option Shares being repurchased. Post-Event Cash Distributions shall mean cash dividends and cash distributions made in respect of the Shares subsequent to the actual date the Purchaser ceased serving as a member of the Board of Directors of Stratus.

*2.5 Adjustments.* The number of Option Shares shall be proportionately adjusted (and the Exercise Price shall be inversely proportionally adjusted) for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company (collectively, a Common Stock Adjustment). In the event of a Common Stock Adjustment, Shares as used herein shall mean the Shares as changed in nature or amount.

*2.6 Cash dividends and cash distributions.* Notwithstanding anything else contained in this Section 2, the Purchaser (as between the Purchaser and the Seller) shall own, without adverse claim of the Seller and not subject to the Option, and be entitled to retain, all cash dividends and cash distributions made in respect of any Shares so long as the Purchaser owns those Shares.

**3. Representations, Warranties, and Covenants of the Purchaser.** The Purchaser hereby represents, warrants, and covenants to the Seller as follows:

*3.1 Sophistication.* The Purchaser: (a) is an Accredited Investor as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act and (b) has such knowledge and experience in financial and business matters generally that he is capable of evaluating the merits and risks of an investment in the Shares.

*3.2 Access to Information.* The Purchaser has access to all of the information he requires to make an informed investment decision with respect to the purchase of the Shares pursuant to this Agreement. The Common Stock is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the Exchange Act), and is listed for quotation on NASDAQ, and Stratus is subject to the periodic reporting requirements of the Exchange Act. Without limiting the generality of the foregoing, the Purchaser has reviewed the documents filed by Stratus with the SEC by Stratus (including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and Definitive Proxy Statements filed since January 1, 2015) (collectively, Stratus SEC Documents). In purchasing the Shares, the Purchaser has relied solely upon his investigation, examination, and evaluation of Stratus, its business, operations, and financial condition (including information publicly available in Stratus SEC Documents), and has not relied on any statement or materials which is not supported by Purchaser's investigation and examination and has not relied on any statement made by Seller (other than Seller's representations set forth in Section 4 and statements made by Seller in the Joint Solicitation Agreement and in his Schedule 13D filings related to his holdings of Common Stock).

*3.3 Risk of Investment.* The Purchaser recognizes that an investment in the Shares involves certain risks and the Purchaser has taken full cognizance of, understand, and are willing to bear all of the risks related to the purchase of the Shares. The Purchaser has carefully considered and, to the extent the Purchaser has believed such discussion is necessary, discussed with his advisors the suitability of an investment in the Shares for his particular tax and financial situations and has determined that the Shares are a suitable investment for him. and the information publicly available in the Seller's filings with the SEC). In particular, the Purchaser confirms that he is familiar with, and understands, the risk factors disclosures set forth in Stratus SEC Documents.

*3.4 Rule 144.* The Purchaser is familiar with Rule 144 promulgated under the Securities Act, including the conditions set forth therein for sales of restricted securities by non-affiliates of the issuer and for sales of restricted securities and other securities by affiliates of the issuer, and understands that:

(a) if the Shares in the hands of the Purchaser were to be deemed restricted securities because the Purchaser were deemed to have acquired the Shares from an affiliate of Stratus in a transaction not involving a public offering, Rule 144 might not be available for Transfers of the Shares by the Purchaser if its conditions applicable to sales of restricted securities were not met (including specifically the Purchaser's holding period for the Shares); and

(b) if, as contemplated by the Joint Solicitation Agreement, the Purchaser is elected to the Board of Directors of Stratus, Rule 144 might not be available for Transfer of the Shares by the Purchaser if its conditions applicable to the sale of restricted securities or other securities were not met.

*3.5 Covenant to Comply with Securities Laws.* The Purchaser acknowledges and agrees that he:

(a) will not offer, sell, transfer, pledge, hypothecate, or otherwise dispose of the Shares ( Transfer ) in violation of any of the securities laws of the United States or of any other jurisdiction, or in violation of this Agreement; and

(b) will not Transfer the Shares unless they are registered under the Securities Act and the securities laws of all other applicable jurisdictions, or an exemption from such registration is available.

*3.6 No Violation; Governmental Consents.* Neither the execution and delivery of this Agreement, nor the consummation by the Purchaser of the transactions contemplated hereby will constitute a violation of: (a) any agreement or commitment to which the Purchaser is subject or by which he or any of his respective properties may be bound; (b) any judgment, decree, order, regulation or rule of any court or governmental authority applicable to the Purchaser; or (c) any statute, laws, or the rules or regulations of any governmental authority applicable to the Purchaser. No consent of any person or governmental authority is required in connection with the execution, delivery, or performance of this Agreement by the Purchaser.

4. Representation and Warranty of the Seller. The Seller hereby represents and warrants to the Purchaser as follows:

*4.1 No Violation; Governmental Consents.* Neither the execution and delivery of this Agreement, nor the consummation by the Purchaser of the transactions contemplated hereby will constitute a violation of: (a) any agreement or commitment to which the Purchaser is subject or by which he or any of his respective properties may be bound; (b) any judgment, decree, order, regulation or rule of any court or governmental authority applicable to the Purchaser; or (c) any statute, laws, or the rules or regulations of any governmental authority applicable to the Purchaser. No consent of any person or governmental authority is required in connection with the execution, delivery, or performance of this Agreement by the Purchaser.

5. Miscellaneous.

*5.1 Notices.* All notices and other communications given or made under this Agreement shall be in writing and shall be deemed to be sufficiently given when personally delivered; when sent by registered or certified mail, return receipt requested, postage prepaid; when sent by overnight delivery service, such as FedEx; or when sent by email, in each case to the other party as follows:

To Purchaser: David M. Dean  
16200 Addison Road, Suite 250  
Addison TX 75001

david@black-dean.com

To Seller:

Carl E. Berg

10050 Bandley Drive

Cupertino CA 95014

ceb@bergvc.com

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or at such other addresses and to such other persons as either party may from time to time designate by notice given as herein provided. Such notices or communications shall be deemed to have been given three (3) days after deposit in the United States mail if sent by regular, registered or certified mail, postage prepaid; one (1) day after delivery to an overnight delivery service; or the same day if sent by email on a business day prior to noon, Fort Worth time, and if sent after noon, then on the next succeeding business day.

*5.2 No Waiver.* Failure of either party hereto to exercise any right or remedy under this Agreement between the Seller and the Purchaser or otherwise, or delay by any party hereto in exercising the same, will not operate as a waiver thereof. No waiver by any party hereto is effective unless and until it is in writing and signed by or on behalf of the party against whom the waiver would operate.

*5.3 Amendments.* This Agreement and the provisions hereof may not be modified, amended, altered, or supplemented except by execution and delivery of a written instrument signed by the parties hereto.

*5.4 Construction of Terms.* All provisions and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of such person or persons shall require.

**5.5 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF THE CONFLICT OF LAWS. IN THE EVENT THAT ANY PROVISION OF THIS AGREEMENT IS INVALID OR UNENFORCEABLE UNDER ANY APPLICABLE STATUTE OR RULE OF LAW, THEN SUCH PROVISION SHALL BE DEEMED INOPERATIVE TO THE EXTENT THAT IT MAY CONFLICT THEREWITH AND SHALL BE DEEMED MODIFIED TO CONFORM WITH SUCH STATUTE OR RULE OF LAW. ANY PROVISION HEREOF WHICH MAY PROVE INVALID OR UNENFORCEABLE UNDER ANY LAW SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION HEREOF.**

*5.6 Entire Agreement.* This Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by all parties.

*5.7 Survival of Representations, Warranties, and Covenants.* The representations, warranties, and agreements of the Purchaser and the Seller made herein and in any certificates or other agreements or investments delivered by or on behalf of such party pursuant to this Agreement shall survive execution and delivery of this Agreement and performance of the transactions contemplated herein.

*5.8 No Assignment; No Third Party Beneficiary; Benefit of the Parties.* Neither this Agreement nor any interest in this Agreement may be assigned by either party hereto without the prior written consent of the other (which may be given or withheld in his sole discretion) and any attempted assignment absent such consent shall be void and of no effect. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies to any person other than the parties hereto. Subject to the foregoing, this Agreement is for the benefit of the parties hereto and shall inure the benefit of and be binding upon their respective heirs, legal representatives, and assigns. (By way of illustration and not limitation, the Shares, whether held by the Purchaser, his heirs, legal representatives or assigns, shall remain subject to Section 2 (Option in Favor of the Seller to Repurchase Shares), the Note and the Security Agreement in accordance with their respective terms.)

*5.9 Counterparts.* This Agreement may be executed in one or more counterparts, all of which taken together shall constitute a single instrument. Execution and delivery may be by email transmission.

*5.10 No Special Relationship Created.* It is not the intention of the parties to this Agreement to create by virtue of this Agreement any trust, partnership, joint venture, agency or any similar relationship between them or any fiduciary



relationship between them.

*5.11 Further Assurances.* The Seller and the Purchaser each agrees to execute and deliver such other instruments and take such other actions as may be reasonably requested by the other party in order to effectuate the transactions contemplated by this Agreement in accordance with applicable laws and otherwise to effectuate the intents and purposes of this Agreement; however, neither party shall be required in complying with this Section 5.11 to expend any funds, incur any monetary obligations, or assume any legal risks which such party reasonably considers significant or burdensome.

**IN WITNESS WHEREOF**, the Seller and the Purchaser hereto have caused this Agreement to be executed as of the date first written above.

SELLER:

/s/ Carl E. Berg  
Carl E. Berg

PURCHASER:

/s/ David M. Dean  
David M. Dean

**SCHEDULE A-1**

**SUBSTANTIVE TERMS AND FORM OF NOTE**

The Note shall be in the form of Form 21-1 (Promissory Note) found in Chapter 21 of the current Texas Real Estate Forms Manual published by The State Bar of Texas (Second Edition, as modified through the 2016 Supplement) (the Texas Real Estate Forms Manual ), modified with appropriate form clauses found in that Chapter 21 to include the following terms:

Maturity Date	Third Anniversary
Interest Rate	Current short-term Applicable Federal Rate
Payment Terms	Interest only due quarterly; principal due upon maturity; prepayable without penalty
Security	The Shares, pursuant to a separate Security Agreement as described in <u>Schedule A-2</u>
Other Terms	Nonrecourse to the Purchaser except for interest payments and in event of default under Security Agreement

**SCHEDULE A-2**

**SUBSTANTIVE TERMS AND FORM OF SECURITY AGREEMENT**

The Security Agreement shall be in the form of Form 23-3 (Security Agreement [Instruments, Investment Property]) found in Chapter 23 of the Texas Real Estate Forms Manual, modified to include the following terms:

Security            The Shares

Other Terms        Modified as needed based upon Shares being held securities account

From time to time, Debtor may demand the partial release of Shares which he wishes to sell, provided that he either (a) pays down the Note at the rate of \$18 for each Share to be released to him or (b) after giving effect to the partial release and applying proceeds from the sale to pay down the Note at the rate of \$18 for each Share released, both (i) the aggregate market value of the Shares continuing to secure the Note is not less than 100% the then outstanding balance of the Note and (ii) the number of the Shares continuing to secure the Note is at least equal to the number of Option Shares then subject to the Option.