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**ESTATES OF BRENTWOOD**

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESTATES OF BRENTWOOD

THIS DECLARATION is made on the date hereinafter set forth by Rockledge, Inc., hereinafter referred to as the "Declarant".

## WITNESSETH

WHEREAS, the Declarant is the owner of certain real property in Travis County, Texas, which is described in Exhibit "A" attached hereto and made a part hereof.

WHEREAS, the Declarant desires to create an exclusive subdivision known as Estates of Brentwood.

NOW THEREFORE, the Declarant declares that the Property shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a subdivision of high standards. Such covenants shall be binding on all parties having any right title or interest therein or any party thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner.

## **ARTICLE I** **Definitions**

**Section 1.** "Property" shall mean and refer to the real property described in Exhibit "A", including, Lot 37, Block C and Lots 7, 14, 17 and 20, Block C of Estates of Brentwood.

**Section 2.** "Association" shall mean and refer to Estates of Brentwood Homeowners' Association, Inc., a Texas not-for profit corporation established for the purpose set forth herein.

**Section 3.** "Lot" shall mean and refer to any plot of land indicated upon the recorded subdivision Plat of the Property or any part thereof creating single-family homesites, with the exception of the Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon.

**Section 4.** "Unit" shall mean and refer to any residential dwelling situated upon any Lot.

**Section 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

**Section 6.** "Declarant" shall mean and refer to Rockledge, Inc., its successors and assigns who are designated as such in writing by the Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assigns.

**Section 7.** "Common Areas" shall mean and refer to that portion of the Property conveyed to the Association for the use and benefit of the Owners, including the following: Lot 1, Block A (private park/greenbelt) and, Lots 28 and 29, Block C (water quality pond and drainage) as shown on the Plat.

**Section 8.** "Common Maintenance Areas" shall mean and refer to the Common Areas, and the entrance monuments, drainage facilities, detention ponds, right-of-way landscaping, landscape easements and such other areas as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the

general health, safety or welfare of the Owners.

**Section 9. "Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Estates of Brentwood and any amendments and supplements thereto made in accordance with its terms.

**Section 10. "Plat"** the final Plat of the Property, as filed in Volume 97, Pages 214-216, Plat Records of Travis County, Texas.

## ARTICLE II

### Estates of Brentwood Homeowners Association, Inc.

**Section 1. Membership.** The Declarant and every other Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every member shall have the right at all reasonable times during business hours to inspect the books of the Association.

**Section 2. Funding.** Subject to the terms of this Article, Declarant, for each Lot owned by Declarant, hereby covenants to pay, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them.

### **Section 3. Assessment.**

(a) **Units Owned by Class A Members.** Subject to the terms of this Article, each Lot is hereby subject to an initial maximum maintenance assessment of \$15.00 per month or \$180.00 per annum (until such maintenance assessment shall be increased or decreased in the By-Laws of the Association), for the purpose of creating a fund to be designated and known as the "Maintenance Fund", which maintenance charge and assessment will be paid by the Owner or Owners of each Lot in advance in monthly, quarterly, or annual installments, commencing as to all Lots on which a completed Unit is then located or the conveyance of the first Lot to a Class A Member and as to all other Lots as of the completion of the Unit thereon. The rate at which each Lot will be assessed, and whether such assessments shall be payable monthly, quarterly, or annually, will be determined by the Board of Directors of the Association at least thirty (30) days in advance of each affected assessment period. Said rate may be adjusted from time to time by the Board of Directors as the needs of the Association may, in the judgment of the Directors require. The assessment for each Lot shall be uniform except as provided in Subsection (b) of this Section 3. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

(b) **Units or Lots Owned by Declarant.** Notwithstanding the foregoing, the Declarant and builders constructing Units for sale in the Property shall be exempt from the annual maintenance assessment charged to Owners so long as there is a Class B membership as set forth in Section 6.

(c) **Purpose of the Maintenance Fund.** The Association shall establish a maintenance fund composed of Owner's maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the use and benefit of all members of the Association. Such uses and benefits to be

provided by the Association may include, by way of clarification and not limitation, any and all of the following: Normal, recurring maintenance of the Common Maintenance Areas and easements, (including but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for existing landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, provided the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which the Maintenance Fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of watchmen, if any, caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order. Whatever is considered of general benefit to the Owners or Occupants or the Property, it being understood that the judgment of the Board of Directors in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements of the Common Maintenance Area. The fund shall be established and maintained out of regular assessments.

(d) **Special Assessment for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements.** In addition to the maintenance assessments authorized above, the Association may levy special assessments as follows:

(i) In any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair, or replacement of a capital improvement upon any Common Maintenance Area, including fixtures and personal property related thereto may be assessed. The Association shall not commingle the proceeds of such special assessment with the Maintenance Fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

**Section 4. Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within ten (10) days after the due date shall bear interest from due date at the highest nonusurious rate of interest allowed by Texas law or 18% per annum, whichever is less. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien retained herein against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his property.

**Section 5. Subordinated Lien to Secure Payment.** To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as above provided, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided however, that each such lien shall be specifically made secondary, subordinate, and inferior to all liens, present and future, given, granted and created by or at the insistence and request of the Owner of any such Lot to secure the payment of moneys advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding, valid and subsisting first mortgage, sixty (60) days written notice of such proposed action shall be sent to the nearest office of the lienholder by prepaid U.S. registered mail; such notice shall contain the statement of the delinquent maintenance assessments upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. Sale or transfer of a Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payment

which became due prior to such sale or transfer. No sale, foreclosure, or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the Real Property Records of Travis County, Texas. The Association shall be entitled to enforce the lien securing assessments at such time as the Association complies with each requirement set forth in Section 51.002 of the Texas Property Code, as amended, which requirements are incorporated in this Declaration, as rights and/or obligations of the Association, by this reference as if fully set forth herein.

**Section 6. Voting Rights.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Member shall be all Owners with the exception of Declarant (until the occurrence of the events referenced in Section 6(b) below which converts Declarant's Class B membership to a Class A membership) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, any such persons shall be members, but the vote of such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any lot.

(b) **Class B.** Class B Members shall be the Declarant and the builders constructing Units for sale in the Property, who shall be entitled to three (3) votes for each unoccupied Lot owned by it. The Class B membership shall cease and be converted to Class A membership one hundred (100) days after the conveyance of the Lot which causes the total votes outstanding in the Class B membership to be less than fifteen (15).

(c) **Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article or is otherwise in default hereunder or under the By-Laws or Rules and Regulations of the Association and such suspension shall apply to the proxy authority of the voting representative, if any.

**Section 7. Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all members, or delivered to their residences, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such subsequent meeting shall be two-thirds (2/3) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each subsequent meeting). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 8. Maintenance of the Drainage Facilities.** The Association is responsible for and shall assume all maintenance obligations with respect to the detention ponds and drainage facilities located within Common Areas until the obligations are assumed by the City of Austin.

**Section 9. Operation and Maintenance of Wastewater System.** The Association is responsible for and shall assume all obligations of Declarant to pay Northwest Travis County Municipal Utility District No. 1 (the "MUD") the annual cost per Lot for the operation and maintenance of the wastewater system as set out in paragraph 8.a. and b. of the "Agreement for Assignment of LUE's between the MUD and Declarant."

### ARTICLE III General Powers and Duties of the Board of Directors of the Association

**Section 1. Purpose of Maintenance Fund.** The Board, for the benefit of the Owners, shall provide and shall pay out of the Maintenance Fund provided in Article II above, the

following:

- (a) Which may or may not include items such as trash removal, street lighting, landscaping, fair share of fire protection, care of park, detention pond and drainage facilities.
- (b) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against Common Areas rather than against the individual Owners, if any.
- (c) Care and preservation of the Common Maintenance Areas.
- (d) Legal and accounting services, if needed.
- (e) A policy or policies of insurance insuring the Association against any liability to the public or the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors, including a policy or policies of insurance as provided herein in Article IV.
- (f) Workers' Compensation Insurance to the extent necessary to comply with any applicable laws, if needed.
- (g) Fees to the MUD for the operation and maintenance of the wastewater system as provided herein in Article II, Section 9.
- (h) Any other materials, supplies, insurance, furniture, fixtures, labor, services maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

**Section 2. Powers and Duties of the Board.** The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the By-Laws of the Association:

- (a) To execute all Declarations of Ownership for Tax Assessment purposes with regard to the Common Areas.
- (b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.
- (c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- (d) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- (e) To make reasonable rules and regulations for the operation of the Common Maintenance Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by Owners constituting a majority of the votes of the Association.
- (f) To make available for inspection by Owners within ninety (90) days after the end of each year an Annual Report and to make all books and records of the Association available for inspection by Owners at reasonable times.
- (g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

**Section 3. Board Powers Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the Maintenance Fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

**Section 4. Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

#### ARTICLE IV Title to Common Areas

**Section 1. Association to Hold.** Title to the Common Areas shall remain in the Association.

**Section 2. Maintenance Obligations.** The Association shall assume all maintenance obligations with respect to the Common Areas and provided for in this Declaration.

**Section 3. Liability Insurance.** From and after the date on which title to any Common Area vests in the Association, the Association has the authority to purchase and carry a General Comprehensive Public Liability Insurance Policy for the benefit of the Association and its members, covering occurrences on the Common Areas. The policy limits shall be as determined by the Board of Directors of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, cross liability endorsements or other appropriate provisions for the benefit of the members, Directors, and the management company and other insured, as their interest may be determined.

**Section 4. Condemnation.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps that it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board of Directors of the Association determines that the funds cannot be used in such a manner due to lack of available land for additional Common Areas or for whatever reason, any remaining funds may be utilized by the Association for the General Maintenance Fund.

#### ARTICLE V Easements

**Section 1. Utility Easements.** As long as Class B Membership shall be in effect, the Declarant hereby reserves the right to grant perpetual, non-exclusive easements for the benefit of the Declarant or its designees, upon, across, over, thorough and under any portion of the Common Area or any portion of any Lot outside of the permitted building area of such Lot, for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and services lines and services systems, public and private, including, without limitations, cable television. Declarant, for itself and its designees, reserves the right to retain title to any such easements. Upon cessation of Class B Membership, the Association shall have the right to grant the easements described herein.

**Section 2. Declarant's Easement to Correct Drainage.** As long as Class B



Membership shall be in effect, or for two (2) years from the date of filing of the Plat, whichever is greater, Declarant hereby reserves a blanket easement on, over, and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety, and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damage, as may be necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

**Section 3. Easement for Unintentional Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Areas used by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

**Section 4. Entry Easement.** The Association shall have the right to enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, upon any Lot for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any improvement or any other portion of the Property to conform to the restrictions contained in this Declaration. Entry as provided herein shall not be deemed a trespass and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

**Section 5. Drainage Easement.** Easements for the installation and maintenance of utilities, storm water drainage and retention/detention ponds, and/or a landscape area are reserved as may be shown on the Plat. Within these easement areas, no structure, plant or material shall be placed or permitted to remain which may hinder or change the direction or flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot.

**Section 6. Temporary Completion Easement.** All Lots shall be subject to easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side or rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate twelve (12) months after the date such Lot is conveyed to the Owner by the Declarant.

## **ARTICLE VI Property Rights**

**Section 1. Owner's Easement of Enjoyment.** Every owner shall have the right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of the Association members.

(b) The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days of any infraction of its published rules and regulations.

(c) The rights of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to the conditions as may be agreed by the Association. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication

or transfer.

(d) All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, successors, personal representative and assigns, perpetually and in full force.

**Section 2. Effect of Declaration.** Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

**Section 3. Rezoning Prohibited.** No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant (as long as Declarant owns any Lot subject to this Declaration), which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

## **ARTICLE VII**

### **Architectural Control**

**Section 1. Appointment.** The Declarant shall designate and appoint an Architectural Control Committee (herein called the "Committee") composed of two (2) individuals, each generally familiar with the residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards of the Property. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the property consistent with this Declaration.

**Section 2. Successors.** In the event of the death, resignation or removal by the Declarant of any member of the Committee, the remaining members shall appoint a successor member. In default of such appointment, the Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration.

**Section 3. Approval of Plans and Specifications.** No satellite dish larger than three (3) feet in diameter, fence, building, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same have been submitted to, and approved in writing, prior to construction, by the Committee, as to harmony of external design and location in relation to surrounding structures. No satellite dish shall be visible from the front street.

**Section 4. Standards.** The committee shall have sole discretion with respect to taste, design and all standards that are specified herein. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property.

**Section 5. Termination; Continuation.** The Committee appointed by the Declarant shall cease to exist on the earlier of: (a) The date on which all members of the Committee file a document declaring the termination of the Committee, or (b) The date on which residences have been constructed on all Lots on the Property. Notwithstanding the above provision, at any time after the termination of the Committee, the record owners of a majority of the Lots on the Property shall have the authority to record an instrument which provides for a committee elected by the homeowners to continue the functions of the Committee, which instrument shall establish

election or appointment procedures whereby the homeowners' committee members shall be chosen and a notice procedure whereby all owners of homes on the Property will receive notice of such procedures. If there is no Committee or homeowners' committee, no approval by the Committee or homeowners' committee shall be required under this Declaration; however, such plans and specifications shall fully comply with this Declaration notwithstanding the lack of approval. Variations from the standards set forth in this Declaration shall be made in accordance with the general development standards as reflected in the plans, construction materials, landscaping and other matters approved by the Committee or homeowners' committee during their periods of control.

**Section 6. Liability of Committee.** The members of the Committee shall have no liability for the decisions made by the Committee so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the plans submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plan's compliance with the general provisions of this Declaration, City Codes, State Statutes or the Common Law, whether the same relate to lot line, building line, easements or any other issue.

**Section 7. Failure of Committee to Act.** In the event that any plans and specifications are submitted to the Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with this Declaration shall be deemed to have been had.

## ARTICLE VIII BUILDING AND USE RESTRICTIONS

**Section 1. Residence Buildings and Garages.** Unless otherwise provided in this Declaration, no building or other structure shall be built, placed, constructed, reconstructed, altered or permitted on any Lot other than one detached single family structure (and garage) and no structure shall be occupied or used until the exterior construction thereof is completed. Each single family structure situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) automobiles with not less than four hundred (400) square feet. If front entry and attached to main residence, garage must be recessed back of or pulled forward from the front wall of the residence at least four (4) feet, unless the front wall of the residence has at least a four (4) foot offset or a covered front porch. No carport shall be built, placed, constructed or reconstructed on any Lot. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

**Section 2. Residential Use.** Each Lot (including land and improvements) shall be used and occupied for residential purposes only. No Owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied for any purpose other than as a private single family residence for the Owner or his tenant and their families. As used herein the term "residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for garage apartments or other apartment use. The Owner or his tenant is allowed to use an office within the residence unless it results in frequent visits by clients or customers.

**Section 3. Other Structures.** No structures of temporary character, trailer, mobile, modular or prefabricated home, storage building, playhouse, greenhouse, barn or other outbuildings shall be erected, placed, altered or permitted to remain on any Lot at any time, either temporarily or permanently without the prior written consent of the Committee; provided however, servant's quarters, or a guest house not to exceed 600 square feet of floor area will be permitted provided that the main dwelling be substantially completed prior to said erection and provided further that all other restrictions, covenants, conditions and uses herein are complied with. No residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except however, that Declarant reserves the

exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to a temporary office building, storage area, sign, portable toilet facilities, sales office and construction trailer. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with the construction and sales operations on the Property, but in no event, shall a builder have such right for a period in excess of one hundred twenty (120) days from the date of sale of his last residence on the Property.

#### **Section 4. Construction Requirements.**

(a) Only new construction materials (except for used brick) shall be used and utilized in the construction of any structures situated on a Lot. The exterior walls of the ground floor of any residence and garage shall consist of not less than seventy-five percent (75%) masonry veneer except for the following Lots which shall have a one hundred percent (100%) masonry veneer requirement for the ground floor and the rear wall of any second floor of each residence: Lots 2, 8, 25, 26, 29, 31, 34, 35, 38, 40, 43, Block A; and, Lots 1, 7, 8, 14, Block B; and, Lots 1, 5, 6, 9, 10, 11, 12, 13, 14, 34, 36, Block C. For purposes of this Declaration "masonry veneer" shall mean only brick, rock or stucco. The front wall of a two-story residence shall consist of one hundred percent (100%) masonry veneer unless the second floor is offset from the front wall of the ground floor. In addition to the seventy-five percent (75%) masonry veneer requirement specified above, for corner Lots one hundred percent (100%) masonry veneer is required for ground floor and second floor walls facing both streets and the rear wall of any second floor; however, there is no masonry requirement for the end of a gable roof. A brickledge is required not greater than twenty-four (24) inches above the finished grade of the front and sides of any residence. For purposes of determining the masonry veneer requirement, covered porches (whether masonry veneer or not) shall be considered masonry veneer. No four by eight (4x8) foot siding shall be used in construction of any structures on a Lot unless waived in writing by the Committee prior to construction. Siding material must be equal to or of greater quality than Masonite SuperSide siding. Unless located at the rear of the residence, any exterior fireplace chimney extending out beyond the exterior wall of the residence shall be of masonry veneer; provided, however, this sentence shall not prohibit the use of a metal firebox and/or flue within a masonry veneer chimney. All dwellings constructed on corner Lots shall have masonry veneer exterior fireplaces if they extend out beyond an exterior wall, notwithstanding the location of the fireplace. The construction requirements specified in this Section 4.(a) may be adjusted or waived by the written consent of the Committee prior to construction. An interior fireplace chimney which projects through the roof but does not extend out beyond an exterior wall does not have any masonry veneer requirement. The exterior walls of a detached garage shall consist of not less than seventy-five percent (75%) masonry veneer.

(b) In areas with a backslope between the property line and the street curb that exceeds a three (3) to one (1) slope, a retaining wall shall be built of brick or rock material approved by the Committee unless the structural containment would be less than one (1) foot in height or the requirements of this paragraph (b) are waived in writing by the Committee prior to construction.

(c) All exterior construction of the primary residential structure, garage, porches and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceilings and doors completed and covered by paint, wallpaper, paneling or the like, and all floors covered by wood, carpet, tile or other floor covering) shall be completed not later than ten (10) months following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

(d) No window air conditioner shall be permitted to be used, placed or

maintained on or in any building in any part of the Property, unless it is not visible from the street, except that such window units shall be permitted for a builder's temporary sales office and construction trailer.

(e) No roofs of the structures situated on any Lot shall be constructed of composition/fiberglass shingles unless the shingles provide a three dimensional appearance. Tile roofs are allowed. Metal roofs must be painted to prevent the reflection of sunlight. Any other roofing material must be approved in writing by the Committee prior to construction.

(f) No unsightly or elaborate antennae for receiving and/or transmitting television and/or radio signals will be allowed, excepting this restriction is not to be construed to prohibit the small conventional television rooftop antennae for normal viewing purposes. A microwave dish larger than three (3) feet in diameter or similar such equipment for receiving and/or transmitting television and/or radio signals shall not be permitted, unless waived by the written consent of the Committee prior to erecting such equipment.

(g) Unless adjusted or waived by the written consent of the Committee prior to commencing landscaping, the front yard of any resident shall be landscaped as a lawn and no gravel, rocks or similar material shall be placed in the front of any residential structure situated on a Lot, except this restriction is not to be construed to prohibit circular driveways, sidewalks, retaining walls or landscaping features including xeriscaping.

**Section 5. Size of Residences.** No one-story single family structure with a heated area of less than two thousand (2000) square feet or two-story single family structure less than two thousand three hundred (2300) square feet, exclusive of the area of garages, porches, or other appurtenances or appendages, shall be erected on any Lot, unless adjusted or waived by the written consent of the Committee prior to construction.

**Section 6. Building Location.** No structure or other improvement shall be located on any Lot between the building setback lines shown on the plat and the street. No building shall be located nearer than five (5) feet to any side Lot line. For the purposes hereof, the term "side yard" shall mean and refer to that portion of the Lot lying between the side Lot line and a line coincident with the exterior wall of the structure situated on such Lot which is nearest such side Lot line. No main residence building nor garage or other building shall be located on any Lot nearer than ten (10) feet to the rear Lot line. In the case of irregular shape Lots where a clear differentiation cannot be made between rear and side Lot lines, the Committee will rule and determine their location. No building shall be located within a public utility easement or drainage easement. For the purposes of this Section, eaves, steps, driveways, open porches and swimming pools shall not be considered as a part of the building; provided, however, that the foregoing shall not be construed to permit any improvement on any Lot to encroach upon another Lot. Unless otherwise approved in writing by the Committee, each main residence building will face the front of the Lot.

**Section 7. Fences, Walls, and Hedges.** No fence or wall shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot except Lot 1, Block A and Lots 28, 29 and 37, Block C, and such fence or wall shall not exceed seven and one-half (7 1/2) feet in height, unless waived in writing by the Committee prior to construction. For corner Lots, if a wood fence is constructed along the side street, the face side of the fence must be visible from the street.

All lots abutting Anderson Mill Road shall have a wood privacy fence along Anderson Mill Road built in accordance with the design required by the Architectural Control Committee.

All lots shall have a wood privacy fence at least six feet but no more than seven and one-half feet in height along the rear property line except Lots 1 through 7 and 9 through 12, Block A and Lots 28 and 29, Block C.

No chain link or metal fences shall be permitted on any Lots, except Lots 1 through 7 and 9 through 12, Block A and Lots 28 and 29, Block C, except in special circumstances, such

as to enclose a swimming pool or tennis court, and the express written consent of the Committee shall be first obtained.

**Section 8. Shrubs and Trees.** No shrub or tree planting which obstructs sight lines at elevations between two (2) and seven (7) feet above the roadway shall be planted on any corner Lot within the triangular area formed by the curblines of such intersecting streets and a line connecting such curbline at points twenty-five (25) feet from their intersection, or, in the case of a rounded corner, from the intersection of the curblines as extended. The same sight line limitation shall apply on any Lot within ten (10) feet of the intersection of a street curbline and the edge of a driveway. No trees shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at a height of more than seven (7) feet above ground level.

**Section 9. Nuisance.** No illegal, noxious or offensive activity shall be carried on or permitted upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. No trucks larger than three-quarter (3/4) ton, motor vehicles not currently licensed, boats, trailers, campers, motor or mobile homes, recreational vehicles or other vehicles shall be permitted to be parked on any Lot, unless they are not visible from the street, or on any street, except passenger cars and trucks three-quarter (3/4) ton or smaller may be parked on the street in front of the Lot for a period not to exceed sixteen (16) hours in any twenty-four (24) hour period. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street or driveway. Trucks larger than three-quarter (3/4) ton shall be permitted on a Lot during the construction of improvements located on that Lot.

**Section 10. Signs.** Except for signs, billboards or other advertising devices displayed by Declarant, for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section 10 are expressly transferred, shall own any portion of the Property, no sign of any kind shall be displayed to the public view on any Lot except:

(a) Builders may display a sign, of not more than forty (40) square feet, on a Lot as reasonably necessary to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and,

(b) Any Owner may display one (1) sign of not more than six (6) square feet on a Lot to advertise the Lot, and any residential structure located thereon, for sale or rent.

Declarant or its agent and the Association shall have the right to remove any sign not complying with the provisions of this Section, and in so doing, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

**Section 11. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets (not to exceed four (4) adult animals) may be kept, but they shall not be bred or kept for commercial purposes.

**Section 12. Lot Maintenance, Garbage, Refuse Storage and Disposal.** The Owner or occupants of all Lots shall at all times maintain the Lot and the improvements situated thereon in a neat, orderly, healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers constructed of metal or plastic materials, with tightly-fitting lids, which shall be maintained in a clean and sanitary condition and kept from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building material used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials and debris shall be removed from the Lot. No garbage, trash, debris or other waste matter of any kind shall be burned on any Lot.

**Section 13. Septic Tanks.** No privy, cesspool, water supply system or septic tank shall be placed or maintained upon or in any Lot, or other portion of the Property.

**Section 14. Driveways and Sidewalks.** Each Lot must be accessible to an adjoining street by a hard surface driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used.

The following Lots shall have a concrete sidewalk constructed in accordance with City of Austin standards before the residential structure located on such Lots may be occupied:

|                                      |  |
|--------------------------------------|--|
| Monet Dr.                            | Lot 12-25, Block A   |
| Cezanne Street                       | Lots 8-14, Block B (Lot 14 both streets)<br>Lots 34-36, Block C (Lot 36 both streets)                        |
| Matisse Trail                        | Lots 2-8, Block A (Lot 2 both streets)   |
| Rockwell Court and<br>Rockwell Place | Lots 15-27, Block C  |
| Centennial Trail                     | Lot 2, Block A<br>Lots 40-43, Block A<br>Lots 1 and 14, Block B<br>Lots 6-10, Block C<br>Lots 36-40, Block C |
| Cezanne Court                        | Lots 31-33, Block A (Lot 31 side street only)  |

**Section 15. Minimum Lot Area.** No Lot shall be resubdivided unless such resubdivision results in each resubdivided Lot containing not less than 7500 square feet, nor shall any building be erected or placed on any Lot having an area of less than 7500 square feet.

**Section 16. Oil and Mining Operations.** No oil drilling or development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, minerals excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

## ARTICLE IX GENERAL

**Section 1. Remedies.** In the event of any default by any Owner under the provisions of the Declaration, By-Laws or rules and regulations of the Association, the Association shall have each and all of the rights and remedies which may be provided for in this Declaration, the By-Laws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance or for judgment of the payment of the money and collection thereof, or for any combination of the remedies, or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys fees and other fees and expenses, and all damages, permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of the respective maintenance assessments (to the same extent as the liens provided herein for unpaid assessments), upon the Lot and upon all of the owners additions and improvements thereto, and upon all of the owners personal property upon the Lot. Any and all of such rights

and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

**Section 2. Term and Amendments.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the votes outstanding shall have voted to terminate the covenants and restrictions of this Declaration, which termination shall be by a written instrument signed by seventy-five percent (75%) of the Owners and properly recorded in the Real Property Records of Travis County, Texas. This Declaration may be amended by an instrument signed by Owners constituting not less than seventy-five percent (75%) of the votes of the Association; provided that as long as there is a Class B Membership this Declaration may be amended solely by Declarant. Any amendment must be recorded.

**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain, in full force and effect.

**Section 4. Reserved Right of Declarant.** Notwithstanding any other provision hereof, Declarant reserves the right upon application and request of the Owner of any Lot to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such Declarant by Applicant) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of the Declarant such action be necessary to relieve hardship or permit good architectural planning to be achieved. Declarant also reserves the right to resubdivide and replat any of the Property shown on the Plat or any Lot at any time in question owned by the Declarant without any notice to or consent of any other Owner.

**Section 5. Rights and Obligations.** The provisions of this Declaration and the Articles of Incorporation and By-Laws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon each and all the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the acceptance and recording of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and By-Laws, whether or not mention thereof is made in said deed.

#### ARTICLE X RATIFICATION

Whitney Partnership and Horizon Bank & Trust, SSB, the owners and holders of liens covering all or part of the Property, Josephine Krenek, the Current Owner of Lot 37, Block C of the Property and George Wimpey of Texas, Inc., the Current Owner of Lots 7, 14, 17 and 20, Block C of the Property, have executed this Declaration to evidence their respective joinder in, consent to, and ratification of the impositions of the foregoing covenants, conditions and restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, the Lienholders and the Current Owners have executed this Declaration to be effective, this 10 day of DECEMBER, 1996.

DECLARANT:

Rockledge, Inc., a Texas corporation

By:

Leon A. Whitney  
Leon A. Whitney, President



LIENHOLDERS:

Whitney Partnership

By: Kay Whitney  
Kay Whitney, Managing Partner

Horizon Bank & Trust, SSB

By: Charles S. Nicholas Jr  
Name: Charles S. Nicholas Jr  
Title: Executive Vice President

CURRENT OWNERS:

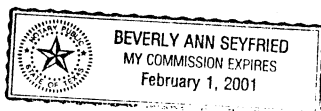
Josephine Krenek

George Wimpey of Texas, Inc., a Texas corporation

By: Douglas J. Moss  
Douglas Moss, Senior Vice President

STATE OF Texas  
COUNTY OF Dallas

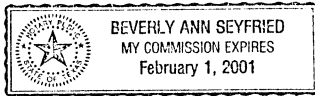
This instrument was acknowledged before me on the 10<sup>th</sup> day of December, 1996, by Leon A. Whitney, President of Rockledge, Inc., a Texas corporation, on behalf of said corporation.



Beverly Ann Seyfried  
Notary Public, State of Texas

STATE OF Texas  
COUNTY OF Dallas

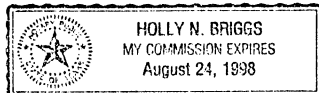
This instrument was acknowledged before me on the 10<sup>th</sup> day of December, 1996, by Kay Whitney, Managing Partner of Whitney Partnership, a Texas partnership, on behalf of said partnership.



Beverly Ann Seyfried  
Notary Public, State of Texas

STATE OF TX  
COUNTY OF TRAVIS

This instrument was acknowledged before me on the 11 day of December, 1996, by Charles S. Nicholas IV exec. v.p. of Horizon Bank & Trust, SSB, a State savings bank, on behalf of said bank.



Holly N. Briggs  
Notary Public, State of TEXAS

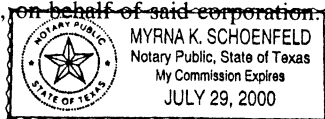
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1996, by Josephine Krenek.

Notary Public, State of \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on the 11<sup>th</sup> day of December, 1996, by Douglas Moss, Senior Vice President of George Wimpey of Texas, Inc., a Texas corporation, ~~on behalf of said corporation.~~



Myrna K. Schoenfeld  
Notary Public, State of TEXAS

AFTER RECORDING RETURN TO:

ROCKLEDGE, INC.  
2105 JUSTIN LANE #101  
AUSTIN, TX 78757  
brent.t

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Page 16

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12834 1206

**EXHIBIT "A"**

**PROPERTY**

All of the Lots in Estates of Brentwood, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 97, Pages 214-216, Plat Records of Travis County, Texas. Declarant owns all the Lots except Lot 37, Block C, which is owned by Josephine Krenek, and Lots 7, 14, 17 and 20, Block C, which are owned by George Wimpey of Texas, Inc., both of said parties having joined in this Declaration as evidenced by Article X.

INITIALED FOR IDENTIFICATION:

*LKW*  
*KJK*  
*[Signature]*  
*D.G.M.*

**FILED**

96 DEC 16 PM 4:09

DANA L. LINDVOR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

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

DEC 16 1996



*Chris Okraun*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

RECORDED  
INDEXED  
FILED

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12834      1207