

146111

THE HILLS OF LOST CREEK SECTION NINE

DEED RESTRICTIONS

THE STATE OF TEXAS X
COUNTY OF TRAVIS X

KNOW ALL MEN BY THESE PRESENTS:

THAT THE HILLS OF LOST CREEK VENTURE, a Joint Venture (referred herein as "Developer"), is the owner of all that certain real property in Travis County, Texas, known as The Hills of Lost Creek Section Nine (The Hills of Lost Creek Section Nine being sometimes referred to herein as "the Subdivision"), according to the map or plat thereof recorded in Volume 84, Pages 51D-52A, Plat Records of Travis County, Texas, to which map or plat and the record thereof, reference is here made for a full and particular description of said property.

Developer desires to create and carry out a uniform plan for the improvement and development and sale of all of the sites in the subdivision, for the benefit of the present and future owners of said lots, and for the protection of property values therein; and to that purpose, Developer hereby adopts and establishes the following declarations, reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvement, occupancy and conveyance of all lots in the Subdivision, including the dedicated roads, avenues, streets, alleys and waterways therein; and, each contract or deed which may be hereafter executed with regard to have been executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full, or by reference in said contract or deed):

I.

GENERAL PROVISIONS

1.01 Duration. The provisions hereof, including the Reservations, Restrictions and Covenants herein set forth, shall apply to each and every lot in the Subdivision, and shall run with the land and shall be binding upon the Developer, its successors and assigns, and all persons or parties claiming under it or them, for a period of thirty (30) years from the date hereof, at which time all of such provisions shall be automatically extended for successive periods of ten (10) years, the then owners of 75% of the lots in the Subdivision shall have executed and recorded in the office of the County Clerk of Travis County, Texas, and instrument changing the provisions hereof, in whole or in part, the provisions of such instrument to become operative immediately as soon as such instrument has been executed and recorded. The provisions hereof may also be amended at any time that 80% or more of the lots in the Subdivision have houses built on them, and said houses are occupied by the owners, such amendment to be made by the then owners of 66-2/3% of all the lots in the Subdivision executing and recording in the office of the County Clerk of Travis County, Texas, an instrument changing the provisions hereof, in whole or in part. In the instance of community property, the signature of the husband or wife alone will suffice.

1.02 Enforcement. In the event of any violation or attempted violation of any of the provisions hereof, including any of the reservations, Restrictions and Covenants herein contained, enforcement shall be authorized by the Developer, its successors and assigns, and/or by the owner of any lot or lots in the Subdivision, by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings or attempting to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provision; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or an irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions. It shall be lawful for the developer, its

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successors and assigns, or for any person or persons owning property in the Subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such provisions. In the event suit is brought, attorney's fees shall be recovered in accordance with Article 1293b of the Revised Civil Statutes of Texas, as it now exists or may hereinafter be amended.

1.03 Partial Invalidity. In the event that any portion of the provisions hereof shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, such partial invalidity shall not affect, alter or impair any other provision hereof which was not thereby held invalid; and such other provisions, including Restriction, Reservations and Covenants shall remain in full force and effect, binding in accordance with their terms. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions; and Developer shall have the right to enter the property of the violator and correct the violation, or to require the same to be corrected.

1.04 Utility Easements.

(a) The utility easements shown or otherwise provided for on the recorded plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Travis County, Texas, as well as for the benefit of the Developer and the property owners in the Subdivision to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, gas, water, sanitary sewers, storm sewers, surface drainage, and any other utility or service which the Developer may find necessary or proper. All utility easements shall be approved by the proper authorities.

(b) The title conveyed to any property in the Subdivision shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits or other appurtenances or facilities constructed by the Developer or public utility companies upon, under, along, across or through such public utility easements; and the right (but no obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to the Developer, its successors and assigns.

(c) The right to sell or lease such lines, utilities, appurtenances or other facilities to any municipality, governmental agency, public service corporation or other party is hereby expressly reserved to the Developer.

(d) The Developer reserves the right to make minor changes in and minor additions to each utility easement for the purposes of more efficiently serving the Subdivision or any property therein. The Lost Creek MUD General Manager will be notified of any significant changes.

(e) When necessary or convenient for the installation of any utility, the company making such installation in utility easements dedicated on the above-mentioned plat or dedicated herein or hereafter created in the Subdivision, may, without liability to the owner of the land encumbered by such utility easements, remove all or any trees and other vegetation necessary within the utility easements. When necessary or desirable for the maintenance of such utility system, or systems, Developer or utility company may trim trees and shrubbery or roots thereof which overhang or encroach into such easements, without liability to the owner of such shrubbery or trees.

(f) The utility companies or public utilities serving the Subdivision shall have service drop easements for the installation and maintenance of the underground or aerial utility lines or pipes from the utility easements shown or provided for on the recorded plat to the meter or connection for such utilities upon each lot or the improvements erected upon such lot which service drop easements shall be at the location selected by the utility company or public utility and shall be five feet (5') in width, the center lines of which shall be the lines, pipes or other connections necessary to provide such lot or improvements with such utility services. When any such utility company or public utility makes entry into the ground in exercise of its right hereunder, such utility company or public utility shall restore the ground to its former condition upon completion of its work.

II.

ARCHITECTURAL CONTROL BOARD

2.01 Architectural Control Board.

(a) An Architectural Control Board of six members shall be appointed from time to time by Developer. After Developer determines, at his sole discretion, that there are sufficient homeowners residing in the Subdivision, one-half of the members of the Architectural Control Board shall be representatives of Developer and the other one-half shall be representatives of homeowners who reside in the Subdivision. Members of the Architectural Control Board shall serve at the pleasure of the Developer.

(b) The Architectural Control Board shall adopt its own bylaws. The Architectural Control Board may designate a member to act for it in all matters. In the event that any person owning property in the Subdivision shall complain of action on behalf of the Architectural Control Board taken by the designated member, said complaint shall be filed in writing with the Architectural Control Board within seven (7) days of such action. Thereafter, the Architectural Control Board shall meet within seven (7) days and shall decide said appeal. Such decision of the Architectural Control Board shall then be final.

(c) The Architectural Control Board shall meet at any time pursuant to its bylaws.

2.02 Basic Rule.

(a) No building, wall, structure, or improvement of any character shall be erected or placed on any lot in the Subdivision, nor shall any existing structure be altered, until the building plans and specifications and a plot plan showing the location on the lot and dimensions of all proposed walls, driveways, curb cuts, if any, and all other matters relevant to architectural approval, have been submitted to and approved by the Architectural Control Board. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, harmony of aesthetic values of external design with existing and proposed structures and location with respect to topography and finished grade elevation, and on any other grounds which in the sole and uncontrolled discretion of the Architectural Control Board shall seem sufficient. The Architectural Control Board shall give careful attention to all proposed improvements which will be placed on slopes exceeding 20%. Particular caution will be requested so as to minimize filling and cutting of the natural terrain. In many instances, it is contemplated that the Architectural Control Board may require "pier and beams" type foundations for said improvements in lieu of standard "slab on grade." In any event, said requirement shall be at the sole discretion of the Architectural Control Board.

(b) Each application made to the Architectural Control Board shall be accompanied by two sets of plans and specifications for all proposed construction to be done on such lot including plot plans showing the location on the lot and dimensions of all proposed walls, driveways, curb cuts, if any, and all other matters relevant to architectural approval.

(c) The Architectural Control Board shall have the power and authority to create, alter and amend building setback lines, utility easement lines, and requirements as to design of buildings and materials to be used in the construction thereof for any lot or lots within the Subdivision provided that such authority shall be exercised for the purpose of making such lots more useful for the purpose for which they were designed or for the purpose of harmonizing and making aesthetically attractive the Subdivision or the neighborhood of the Subdivision in which the lots so affected are located, as such matters may be determined in the good faith judgment of the Architectural Control Board.

2.03 Effect of Inaction. The plans, specifications, and plot plan referred to in Sec. 2.02 above shall be submitted to the member designated pursuant to Sec. 2.01(b) to act for the Architectural Control Board. If the plans, specifications and plot plans clearly comply with the provisions of Sec. 2.02(a) of Art. II of these deed restrictions, said member may approve such plans, specifications, and plot plans. In the alternative, said member may refer to the plans, specifications, and plot plans to a meeting of the Architectural Control Board.

If the member designated to act for the Architectural Control Board approves such plans, specifications, and plot plans, any person owning property in the subdivision may appeal said action to the Architectural Control Board. Said appeal shall be made in writing within seven days of such approval. Thereafter, the Architectural Control Board shall meet within seven (7) days after the appeal is filed to either uphold said approval or to overrule it. Any decision of the Architectural Control Board on such appeal shall be final and binding on all parties.

Approval or disapproval as to Architectural Control matters as set forth in the preceding provisions shall be in writing. In the event the Architectural Control Board or the member designated to act for the Architectural Control Board fails to approve or disapprove in writing any plans and specifications and plot plans submitted to it or to the designated member in compliance with the preceding provisions within fifteen (15) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan, and all of the other terms and provisions hereof.

2.04 Effect of Approval. The granting of the aforesaid approval shall constitute only an expression of opinion, by the Architectural Control Board that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plat; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such plans and specifications and plat, but nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof. It is specifically provided that no person on the Architectural Control Board, nor the Board itself shall be considered as acting as the agent, servant, or employee of the Developer while performing Architectural Control Board duties, and all actions taken by such persons in connection with the Architectural Control Board shall be taken in their individual capacity or on behalf of the Architectural Control Board. Developer shall not be responsible or liable for any action or inaction on the part of the Architectural Control Board or on the part of any person or persons on such Board while acting in their capacity as a member of said Board. This is true notwithstanding the fact that such member of the Board may be an employee, officer, or director of Developer. Architectural Control Board members from the homeowners' association shall not be individually liable for their actions as members of the Board.

III.

GENERAL RESTRICTIONS

3.01 Use. None of the lots or improvements thereon shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any of said lots other than one detached single family dwelling with a minimum two-car garage.

3.02 View Preservation. No structure shall be placed on any lot which (by reason of high walls or fences, excessive height, specially peaked roof design, etc.) unreasonably will obscure the view from a dwelling located or reasonably to be located upon an abutting lot (and, for this purpose "abutting lot" includes a lot separated only a street). The determination of whether any such structure does or will unreasonably obscure the view from a dwelling located or reasonably to be located upon an abutting lot, as defined, shall be made by the Architectural Control Board, whose judgment shall be final.

3.03 Building Exterior. At least 50% of the exterior, other than the roof, will be either rock or brick masonry, unless the Architectural Control Board approves otherwise.

3.04 Utilities. All utilities will be underground.

3.05 Roofing. Roofing materials shall be approved built-up, wood shingles, 300-pound or better composition shingles, tile, asbestos, or fiberglass, or such other material as may be approved by the Architectural Control Board.

3.06 Size. The floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1800 square feet for a one-story dwelling, nor less than 2,000 square feet for a dwelling of more than one story.

3.07 Set-back Lines. No building shall be located on any of said lots nearer to the front lot line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. In any event, no building shall be located on any of said lots nearer than 25 feet from the front lot line, or nearer than 10 feet to any side street line; except, however, minor variations of the maximum set-back line shall be permitted to allow for preservation and utilization of existing trees or views. No building shall be located nearer than 5 feet to an interior lot line, except that any garage or other permitted accessory building located 50 feet or more from the minimum building set-back line may be 3 feet from the lot line. No dwelling shall be located on any of the interior lots nearer than 25 feet to the rear lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon any other lot.

3.08 Minimum width. No dwelling shall be erected or placed on any of said lots having a width of less than 50 feet at the minimum building set-back line nor shall any dwelling be erected or placed on any of said lots having an area of less than 12,000 square feet, except that dwellings may be erected or placed on lots as shown on the recorded plat of The Hills of Lost Creek Section Nine. No lot in the subdivision may be resubdivided so as to create more than one building site.

3.09 Offensive Activities. No noxious or offensive activity shall be carried on upon any of said lots, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No clothes line may be visible from any public street. No unsightly or elaborate antenna for receiving and/or transmitting television and/or radio signals will be allowed, excepting this restriction is not to be construed to prohibit the smaller conventional television rooftop antenna for normal viewing purposes.

3.10 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any of said lots at any time as a residence either temporarily or permanently. No recreation vehicle larger than an ordinary van and no trailer, camper or other mobile-type home may be parked openly in the street, driveway or at any such place that may be seen from the street or by adjoining property owners for a period of more than 36 hours.

3.11 Signs. No sign of any kind shall be displayed to the public view on any of said lots except one professional sign of not more than five (5) square feet advertising the property during construction and sale periods.

3.12 Oil Operations. No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any of said lots, nor shall oil wells, tanks, tunnels, mining excavations, or shafts be permitted upon or in any of them. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any of said lots.

3.13 No Business or Trade. No part of any of said lots shall ever be used for a business or commercial purpose or for carrying on any trade or profession.

3.14 Corner Lots. No corner lot may be subdivided or used so as to permit an additional dwelling to face on a side street.

3.15 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

3.16 Trash. None of said lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers with animal-proofcovers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

3.17 Corner Lot Fences. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot herein described within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of street lines, or in the case of rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any of said lots within ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient heights to prevent obstruction for such sight lines.

3.18 Fences. No fence, wall or hedge shall be built or maintained forward of the front wall line of any house erected on any of said lots. All fences shall be made of wood or rock and shall not exceed six feet in height.

3.19 Existing Dwelling. No existing dwelling shall be moved onto any lot in this subdivision.

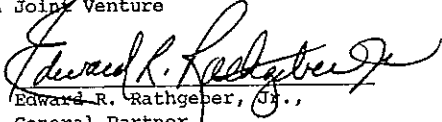
3.20 Construction. All buildings shall be completed within twelve months after the foundation is completed. During the period of construction, the premises of the building site shall be kept free of paper-type trash or other light materials that can be blown by the wind. It will be the builder's responsibility to provide trash receptacles and to make a daily check to insure that all trash has been placed in the receptacles. Builder will also insure that the streets and lots adjoining the building site are also free of debris and trash that has originated from their building site. No blasting will be permitted until the prerequisites of the City of Austin Ordinance Guidelines, Procedures and Implementing Instructions are complied with and the general manager of Lost Creek MUD has approved the plan request. Work which will subsequently require restoration of the streets or easements will not be commenced until all appropriate agencies now existing or prospectively existing have been contacted and the work must be specifically coordinated with the general manager of the Lost Creek MUD or his designated representatives in accordance with the rules of the District. During the period of work all safety precautions will be followed such as warning signs, lights, and flagmen when necessary. Upon completion of the work, the street or easement restoration will be completed within 72 hours to as good or better condition. The streets will be cleaned of all rocks and debris arising from the work.

3.21 Maintenance. The exterior of any structure must be maintained in a manner acceptable in comparison with other structures in the Subdivision, and lawns and landscaping shall be properly mowed, weeded, controlled and cared for in a manner comparable to other lots in the Subdivision.

3.22 Swimming Pools. No above-ground swimming pools will be allowed. Swimming pools in excess of six feet in diameter must be of a permanent nature.

EXECUTED this 13th day of April, 1984.

THE HILLS OF LOST CREEK VENTURE
a Joint Venture

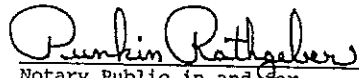
By: 
Edward R. Rathgeber, Jr.,
General Partner
Rathgeber Family Partnership

THE STATE OF TEXAS Y

COUNTY OF TRAVIS Y

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD R. RATHGEBER, JR., known to me to be the person whose name is subscribed to the foregoing instrument, as a General Partner, and acknowledged to me that he executed the same in such capacity as the act and deed of said company for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of April, 1984.


Notary Public in and for
Travis County, Texas

PUNKIN RATHGEBER
NOTARY PUBLIC, STATE OF TEXAS
My Commission Expires DEC. 14, 1985