



DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE ESTATES AT EANES CREEK

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ESTATES AT EANES CREEK**

STATE OF TEXAS                   §  
  §        KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF TRAVIS           §

This Declaration of Covenants, Conditions and Restrictions for The Estates at Eanes Creek (this "**Declaration**") is made to be effective the date set forth below by BELLA STRADA DEVELOPMENT, INC., a Texas corporation (the, "**Declarant**").

RECITALS:

A. Declarant is the owner of that certain real property located in Travis County, Texas, as more fully described below, which is part of a development to be known as The Estates at Eanes Creek subdivision (the "**Subdivision**").

B. Declarant desires to create and carry out a plan for the improvement, maintenance, development and sale of all of the Lots (as hereinafter defined) in the Subdivision, and to create and carry out a plan for the maintenance and repair of all Common Areas (as hereinafter defined) and rights-of-way for the benefit of the present and future owners of said Lots, and hereby adopts and establishes the following reservations, restrictions, covenants, conditions and easements to apply to the use, improvement, occupancy and conveyance of all Lots in the Subdivision; and does hereby establish a property owners' association to effectuate and carry out its purposes and plan.

NOW, THEREFORE, Declarant does hereby make and file this Declaration and declare that all of the Property described herein and made subject hereto shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in or to the above described Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 **Architectural Committee** shall mean the committee created pursuant to Article VIII hereof (sometimes referred to as the "**Committee**").

1.02 **Architectural Committee Rules** shall mean the rules adopted by the Architectural

Committee pursuant to Section 8.03 hereof (sometimes referred to as the "Committee Rules").

- 1.03 **Assessments** shall mean assessments of the Association, and includes both regular and special assessments, and shall also have the meaning set forth in Section 5.06(A).
- 1.04 **Association** shall mean Bella Strada Homeowners Association, Inc., a Texas nonprofit corporation, its successors or assigns, or such other entity as may be created to administer the affairs of the Subdivision in accordance with the provisions hereof.
- 1.05 **Association Property** shall mean all real or personal property now or hereafter owned by or leased to the Association, including easements granted to the Association or for the common benefit of the Owners of the Lots.
- 1.06 **Board** shall mean the Board of Directors of the Association.
- 1.07 **Bylaws** shall mean the Bylaws of the Association as may be adopted by the Board, and as may from time to time be amended.
- 1.08 **Certificate** shall mean the Certificate of Formation for the Association as filed in the Office of the Secretary of State of the State of Texas, as such Certificate may, from time to time, be hereafter amended.
- 1.09 **City** shall mean of the ETJ of The City of Austin.
- 1.10 **County** shall mean Travis County, Texas.
- 1.11 **Common Area** shall mean and include any Lot designated by the Declarant as Common Area for the primary benefit of the Owners; (b) any private streets or (d) any other area designed as Common Area on any final plat of the Subdivision, or by any other written instrument duly acknowledged and filed of record in Travis County, Texas. Common Area may be owned by the Association or by Declarant. It shall not mean or include the Greenbelt and Drainage Easement on Lot 4, Block C.
- 1.12 **Declaration** shall mean this instrument and any future amendments or supplements thereto.
- 1.13 **Design Guidelines** shall mean the criteria and guidelines established by the Architectural Committee for the construction of Improvements and landscaping within the Property.
- 1.14 **The Estates at Eanes Creek** shall mean all that real property described on Exhibit "A" attached to and made a part of this Declaration and any property added to the Property subject to the terms of this Declaration pursuant to the terms of this Declaration.



- 1.15 **The Estates at Eanes Creek Maintenance Fund** shall mean the fund created for the receipts and disbursements of the Association.
- 1.16 **The Estates at Eanes Creek Restrictions** shall mean this Declaration together with any and all Supplemental Declarations that may be recorded pursuant to the terms hereof, and as this Declaration or said Supplemental Declarations may be amended from time to time, together with The Estates at Eanes Creek Rules, the Architectural Committee Rules and the Certificate and Bylaws of the Association, as each of the same may from time to time be amended.
- 1.17 **The Estates at Eanes Creek Rules** shall mean the rules adopted by the Board pursuant to Section 5.05(D) hereof, and as they may be amended from time to time.
- 1.18 **Declarant** shall mean Bella Strada Development, Inc. or its respective successors or assigns; provided that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.
- 1.19 **Improvements** shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, garages, storage buildings, sheds, outbuildings, patios, tennis courts, sport courts, swimming pools, ponds, fences, dog fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, electronic data transmission or other utilities.
- 1.20 **Lot or Lots** shall mean and refer to each separately identifiable portion of the Property identified on any plat of the Subdivision recorded in the Office of the County Clerk of Travis County, Texas, and which is assessed by any one or more of the taxing authorities and which is not intended to be an "open space" or a portion of any Common Area.
- 1.21 **Master Concept Plan** shall mean and refer to the Preliminary Plan for The Estates at Eanes Creek on file in the offices of the City and the County, and as the same may be amended from time to time (sometimes referred to as the "Concept Plan" or the "Plan").
- 1.22 **Member** shall mean any person who is a member of the Association pursuant to Section 5.02 hereof.
- 1.23 **Owner** shall mean (a) Declarant, (b) the person or persons holding a fee simple interest in a Lot, or (c) the purchaser of fee simple interest in a Lot under an executory contract for deed, but shall not include those holding title merely as security for the performance of an obligation or under a contract for sale of a Lot.

- 1.24 **Person** shall mean a natural individual or any entity having the legal right to hold title to real property.
- 1.25 **Plans and Specifications** shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating size, shape, configuration or materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and any other documentation or information relevant to such Improvement.
- 1.26 **Private Driveways** shall mean those joint use driveways as shown and identified on a final plat of any portion of the Subdivision designed and constructed for particular Lot Owners, their guests and invitees within the designated section of the Subdivision as more particularly described in said final plat.
- 1.27 **Private Streets** shall mean privately owned and maintained streets not intended for use by the general public which shall serve the residential Lots governed by the Declaration and The Estates at Eanes Creek Property Owners Association and any security gates or devices controlling access to such streets. Such private streets shall be a part of the Common Area and shall comply with the applicable regulations and the layout and design requirements of the municipality, or the County outside the ETJ of any municipality, whichever is more stringent.
- 1.28 **Property** shall mean all the real property that is subject to the terms and provisions of this Declaration as provided in Section 2 below.
- 1.29 **Record, Recorded, and Recordation** shall mean, with respect to any document, the recordation of such document in the Office of the County Clerk of Travis County, Texas.
- 1.30 **Subassociation** shall mean any Texas nonprofit corporation organized and established by Declarant or by a Subdeveloper pursuant to or in connection with a Supplemental Declaration as provided in Sections 2.02 and 5.01 hereof.
- 1.31 **Subdeveloper** shall mean any person, firm or corporation having purchased one or more Lots within the Property for the purpose of development as a common, unified development.
- 1.32 **Subdivision** shall mean those portions of The Estates at Eanes Creek that have been subdivided by final plat recorded in the Official Public Records of Travis County, Texas, and added to the Property subject to this Declaration as herein provided.
- 1.33 **Supplemental Declaration** shall mean any declaration of covenants, conditions, and restrictions which may be hereafter recorded by Declarant by a Subdeveloper (after approval in writing by Declarant), subject to all of the terms and restrictions of this

Declaration and not in conflict herewith.

**ARTICLE II**  
**THE PROPERTY, ANNEXATION AND WITHDRAWAL OF LAND**

**2.01 PROPERTY SUBJECT TO THIS DECLARATION.**

The real property subject to this Declaration (the "Property") shall be the hereinafter described real property, and such additional real property that may hereafter be added to the Property subject to this Declaration as hereinafter provided, save and except any real property that may be withdrawn from this Declaration as hereinafter provided. Initially, the Property that is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Travis County, Texas, and is more particularly described as follows:

All that real property described on Exhibit "A" attached hereto.

**2.02 DEVELOPMENT BY DECLARANT.**

Declarant may divide or subdivide The Estates at Eanes Creek into several areas, develop some of said areas, and, at Declarant's option, dedicate some of said areas as Common Areas, or for other purposes for the benefit of the developed areas in accordance with the Plan for The Estates at Eanes Creek. As each area is developed or dedicated, Declarant, or if the area is owned by a Subdeveloper, such Subdeveloper, may record one or more Supplemental Declarations and designate the use, classification, and such additional covenants, conditions, and restrictions as Declarant or such Subdeveloper may deem appropriate for that area. Any Supplemental Declaration may, but need not, provide for the establishment of a Subassociation to be comprised of Owners within the area subject thereto. All lands, improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration, if any, for that area.

**2.03 ADDITION OF LAND.**

Declarant and other persons with Declarant's written consent during the Declarant Control Period (as hereinafter defined) and with the written consent of the Board thereafter, may at any time, and from time to time, add to the Property that is subject to this Declaration all or such portions of the land described in Exhibit "A" attached hereto or such other property as may be determined to be appropriate. Declarant may add to the Property such additional land as may be then owned by Declarant. No land may be added to the Property subject to the terms of this Declaration except by the owner of such land at the time it is added to the Property. Upon the recording of a Notice of Addition of Land executed by the owner of the land being added to the Property, which Notice shall contain the joinder of Declarant to evidence the consent of Declarant to the addition of the land if Declarant is not the owner of such land, containing the provisions set forth below in this Section 2.03 (which Notice may be contained within any Supplemental Declaration affecting such land), the covenants, conditions, and restrictions contained in this Declaration shall apply to the added land, and the rights, privileges, duties and

liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration; provided, any Supplemental Declaration may, but need not, provide that certain provisions of this Declaration are not applicable to the land covered by such Supplemental Declaration, or may amend or modify the provisions of this Declaration as to all or any parts of such added land. Any Supplemental Declaration may provide for its own procedure for the amendment of any provision thereof, as for example, by specified vote of only the Owners of the property within the area subject thereto or a specified vote of only the Owners of some of the property within the area subject thereto. Furthermore, additional properties may be annexed into the Property at any time with the assent of two-thirds (2/3) of the votes for each class of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter.

The Notice of Addition of Land referred to hereinabove shall contain the following provisions:

- (a) A reference to this Declaration, which reference shall state the date of recordation hereof and the book and page numbers wherein this Declaration is recorded;
- (b) A statement that the provisions of this Declaration shall apply to the added land as set forth herein;
- (c) An adequate legal description of the added land; and
- (d) Declarant's written consent, if the land being added to Exhibit "A" during Declarant's Control Period and is not owned by Declarant, or the consent of the Board, if the land is being added after the expiration of Declarant's Control Period. As part of such written consent by Declarant, Declarant may agree with the person who owns such land as to the terms and conditions upon which Declarant will exercise its rights and duties, as Declarant under this Declaration, with respect to such land added to Exhibit "A".

#### 2.04 LANDS OWNED BY SUBDEVELOPER.

If any portion of the land described in Exhibit "A", or other lands hereafter made subject to this Declaration, is sold to a Subdeveloper, any Supplemental Declaration with respect thereto shall be made expressly subject to all the terms and restrictions of this Declaration.

#### 2.05 WITHDRAWAL OF LAND.

Declarant, and others with Declarant's written consent during Declarant's Control Period, and with the written consent of the Board thereafter, may, at any time and from time to time, reduce the area which is now described on Exhibit "A". If lands are withdrawn at a later time from the lands now shown on Exhibit "A", the Declaration shall no longer apply to those lands withdrawn. The procedure for withdrawal of land shall be the same as set forth above in Section 2.03 for the addition of land except that the instrument shall be designated as a Notice of

Withdrawal of Land.

### ARTICLE III GENERAL RESTRICTIONS

All Lots within the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

#### 3.01 ANTENNAS.

No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation which is visible from the exterior of a residence shall be erected, used or maintained on any Lot except with the written approval of the Architectural Committee; provided, however, that one (1) satellite dish receiver no greater than one (1) meter in diameter may be located on a Lot so long as the satellite dish is not visible from the street located adjacent to the front lot line of said Lot.

#### 3.02 INSURANCE RATES.

Nothing shall be done or kept in the Property which would increase the rate of insurance on any Lot or the Association Property without the approval of the Board, nor shall anything be done or kept in or on the Property that would result in the cancellation of insurance on any residence or any part of the Association Property or which would be in violation of any law.

#### 3.03 SUBDIVIDING.

No Lot or Common Area shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof (including any Subassociation) without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot or Common Area and convey any easement or other interest less than the whole, all without the approval of the Architectural Committee; and provided further, that nothing herein shall be deemed to require the approval of the Architectural Committee for the transfer or sale of any Lot, including Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any mortgagee or deed of trust.

#### 3.04 SIGNS.

No sign of any kind shall be displayed on any Lot to the public view without the approval of the Architectural Committee, except for:

- (i) Signs which are permitted pursuant to the Design Guidelines or rules adopted by the Architectural Committee;
- (ii) Signs which are part of Declarant's overall marketing or construction plans or

activities for the Development;

- (iii) Permits as may be required by legal proceedings; and
- (iv) Permits as may be required by any governmental entity or Quasi-governmental Entity.

Unless otherwise permitted by any Section in this Declaration, no "For Sale", "For Rent", "For Lease", or similar sign advertising a Lot for sale or for lease may be placed on any Lot or any portion of the Property without the prior consent of the Declarant for so long as the Declarant owns all or any portion of the Property, and the Board thereafter.

An Owner or resident will be permitted to post a "No Soliciting" and "Beware of Dog" sign near the front door to their residence, provided, that the sign may not exceed eighty-eight (88) square inches and must comply with the standard form adopted by the Architectural Committee.

### **3.05 RUBBISH AND DEBRIS.**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants, or any Common Area or Association Property. Refuse, garbage and trash shall be kept at all times in a covered, noise-less container and any such container shall be kept within an enclosed structure or appropriately screened from view.

### **3.06 NOISE.**

No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the Board. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or portion of the Property or to its occupants.

### **3.07 REPAIR OF BUILDINGS.**

All Improvements hereafter constructed upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner (including any Subassociation) thereof. The opinion of the Board as to such condition shall be final.

### **3.08. IMPROVEMENTS AND ALTERATIONS.**

Any construction, other than repairs pursuant to Section 3.07 hereinabove, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Committee and in

accordance with the "Design Guidelines" established from time to time by the Architectural Committee.

### 3.09 VIOLATION OF THE ESTATES AT EANES CREEK RESTRICTIONS.

(a) The violation of The Estates at Eanes Creek Restrictions by an Owner, his family, guests, lessees or licensees shall authorize the Board to avail itself of any one or more of the following remedies:

- (i) The imposition of a special charge in an amount to be determined by the board (which amount may be per violation, and per day of each violation), or
- (ii) The suspension of Owner's rights to use any Association Property, or
- (iii) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner, or
- (iv) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorneys' fees and court costs.

(b) Before the Board may invoke the remedies provided above, it shall give notice of such alleged violation to Owner by certified mail, return receipt requested. The notice shall (i) describe the violation that is the basis of the charge, suspension, fine or action, and state the amount due to the Association (if any) from the Owner, and (ii) inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve [12] months) and that the Owner may request a hearing pursuant to Section 209.007 of the Texas Property Code (as the same may be amended or replaced from time to time). If, after the hearing, a violation is found to have existed or exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation.

### 3.10 DRAINAGE.

There shall be no interference with the established drainage patterns over any of the Property, except by Declarant during the construction of infrastructure improvements pursuant to plans approved by the appropriate governmental authorities, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

### 3.11 EASEMENTS.

- (a) Cross-Drainage Easements. Each Lot shall be burdened with a perpetual, non-exclusive easement over that portion of the Lot which is not improved with structures, for the purpose of drainage of stormwater runoff from any portion of the

Property; provided, no Person shall alter the natural drainage of stormwater from any Lot once construction of initial Improvements has been completed so as to unreasonably increase the drainage of stormwater onto adjacent portions of the Property without the consent of the Owner(s) of the affected property, the Board, and the Declarant as long as it owns any property subject to this Declaration.

- (b) Easements for Stormwater Runoff. Each Lot and all other portions of the Property are subject to an easement in favor of Declarant or the Association, as the owner of the Common Area, and the neighboring properties for the natural or controlled flow of stormwater across the Property; provided, this Section shall not permit changes to the existing stormwater flow without the approval of Declarant or the Owner of the affected Lot or Lots.
- (c) Easements to Serve Additional Property. Declarant hereby reserves for itself and its authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any area within the Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it or the Person exercising such easement shall be responsible for any damage caused to the Common Area or any Lot as a result of the exercise of such easement.
- (d) Easements for Encroachment. The Declarant hereby creates, for the benefit of each Lot and each portion of the Common Area, reciprocal easements for encroachment due to the unintentional placement, or the settling or shifting, of the structures or Improvements on such Lot or portion of the Common Area, and for maintenance and use of any encroaching structure or Improvement, except that no easement for encroachment shall exist:
  - (i) for any structure or other Improvement constructed in violation of this Declaration;
  - (ii) beyond a distance of three (3) feet, as measured from any point on the common boundary line along a line perpendicular to such boundary; or
  - (iii) if such encroachment occurred due to reckless, willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.
- (e) Easements of Support. Every portion of a Lot contributing to the support of an abutting Lot or roadway shall be burdened with an easement of support for the benefit of such abutting Lot or roadway.
- (f) Drainage Easement on Lot 4, Block C. Improvements within the drainage easement on the Eastern side of Lot 4, Block C and the level spreader on Lot 4, Block C shall



be the responsibility of the Association, including but not limited to any improvements, repairs, upkeep, operation and maintenance.

(g) Easements for Entryway. The Declarant hereby creates a perpetual easement on and over that portion of Lot 1, Block A and Lot 1, Block C as more fully described on Exhibit B, attached hereto and incorporated herewith, which may or may not be improved with structures, for the use and benefit of the Association and each member thereof with the purpose of an entryway into The Estates at Eanes Creek which shall be managed, operated and maintained by the Association at its expense and shall run with the land. Such entryway may be landscaped and improved by the Board, Association or Declarant. This easement includes, but is not limited to, a right of ingress and egress over the easement area for connecting and installing improvements, utilities or landscaping on such property.

(h)

### 3.12 HAZARDOUS ACTIVITIES.

No activities shall be conducted on any Lot and no Improvement shall be constructed or used on any Lot that are or might be unsafe or hazardous to any Person or the Property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted on any Lot or other portion of the Property, except (a) in a contained barbecue unit while attended and in use for cooking purposes, (b) within a safe and well-designed interior fireplace, or (c) such campfires or picnic fires in Common Areas designated for such use by Declarant during Declarant's Control Period, and by the Board thereafter, or by the Board as to all Association Property. The discharging of fireworks within the Property is expressly forbidden unless approved by the Board.

### 3.13 TEMPORARY STRUCTURES.

No tent, shack, trailer, mobile home or other temporary building, improvement or structure shall be placed upon any Lot or other portion of the Property, except that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Declarant, such approval to include the nature, size, duration and location of such structure. Declarant may utilize such temporary buildings or structures as it deems necessary to provide for the ongoing development of The Estates at Eanes Creek or the operation of any facility or amenity in connection therewith.

### 3.14 MINING AND DRILLING.

No Lot or other portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

### 3.15 VEHICLES.

The use of all vehicles, including but not limited to helicopters, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, and wagons shall be subject to The Estates at Eanes Creek Rules, which may regulate, prohibit or limit the use thereof within specified parts of the Property. In addition to the foregoing, and without limiting the generality thereof, no truck, bus, motor home, recreational vehicle, boat or trailer shall be parked in a street for more than forty-eight (48) hours in any seven day period (however, the board shall have the right by rule to decrease permitted hours in its discretion), except for construction and repair equipment while a residence is being built or repaired. No truck, bus, motor home, recreational vehicle, boat or trailer shall be parked on the driveway or any portion of the Lot except in enclosed garages or in such manner as to not be visible from any adjacent street or Lot.

### 3.16 ANIMALS.

No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets such as dogs and cats is allowed; however, no breeding, raising, or boarding of such pets for commercial purposes is permitted. No poultry may be kept on any Lot. Animals shall be kept under control at all times and, when not upon the Owner's Lot, shall be restrained by a leash or under the direct control of the Owner. No animal shall be allowed to roam or run at large. All pet waste will be removed and appropriately disposed of by the Owner of the pet. All pets must be registered, licensed and inoculated as required by law.

### 3.17 UNSIGHTLY ARTICLES.

No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private streets. Without limiting the generality of the foregoing, trailers, mobile homes, recreational vehicles, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in an enclosed garage or other structure; service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view; and liquid propane gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

**ARTICLE IV  
RESIDENTIAL RESTRICTIONS**

**4.01 RESIDENTIAL AREAS.**

All Lots shall be improved and used solely for residential use. No Lot shall be improved or used except by a dwelling or structure designated to accommodate no more than a single family, plus a garage and one guesthouse, or casita, fencing and such other Improvements as are necessary or customarily incident to a single-family residence.

**4.02 RENTALS.**

Nothing in this Declaration shall prevent the rental of a Lot by the Owner thereof for residential purposes, on either a short or long-term basis.

**4.03 MINIMUM YARDS.**

Except as permitted by the Architectural Committee, or as shown on any plat of the Subdivision, the minimum setbacks for each Lot shall be as follows:

- (i) the minimum side setback for Lots shall be ten (10) feet.
- (ii) the minimum rear setback shall be ten feet (10') from the back of the property line.
- (iii) the minimum front setback shall be twenty-five feet (25') from the front property line on which the Lot is located.

Measurements for setbacks will be made from the outer extremity of a dwelling, garage or other structural Improvement that is located or to be located on the Lot. All measurements shall be made from the closest point on a building or structural Improvement, excluding overhangs, gables, chimneys, or other portions of the building or structural Improvement being affected by such measurements.

**4.04 MASONRY REQUIREMENTS.**

All residences, whether located on interior or corner Lots, shall have a 100% of their exterior walls of brick, stone or stucco masonry construction. Hardy Board or similar concrete panel or siding materials may not and shall not be accepted as stone or stucco masonry construction. Limited wood components of the exterior walls, such as dormers, may be permitted with the approval of the Architectural Committee. The exposed exterior of foundations in excess of twenty-four (24) inches above finished grade must be constructed of or

covered by masonry materials so that no more than twenty-four (24) inches of an unfinished or uncovered exterior of the foundation may be exposed above finished grade. Areas of foundation with stucco above them may be finished to match the stucco to meet this requirement.

#### 4.05 MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS.

The air conditioned living area of the main residential structure located on any Lot exclusive of open porches and parking facilities shall not be less than 2,500 square feet for a single story residential structure and not less than 3,000 square feet for a two-story structure. The first floor of a two-story residential structure must contain at least sixty percent (60%) of the total square feet of the structure unless otherwise approved by the Architectural Committee based on the architectural design or other features of the elevation of the residence resulting in a similar non-two story block structure visual effect, the topography of the Lot, the siting of the residence, or such other factors as the Architectural Committee may determine appropriate.

#### 4.06 ROOFING MATERIALS.

Roofing materials used on residential structures must be (i) asphalt or composition rated for not less than a thirty (30) year warranty; (ii) non-reflective metal; (iii) concrete tile; or (iv) any materials approved in writing by the Architectural Committee; provided that the Architectural Committee will only approve roofing materials which are of high grade and quality and which are consistent with the exterior design, color and appearance of other Improvements within the Property.

#### 4.07 DRIVEWAYS.

All driveways and sidewalks shall be masonry or concrete. For example, no asphalt or gravel driveways shall be permitted. All public, or community, sidewalks shall be broomed finish concrete or exposed aggregate.

#### 4.08 GARAGES.

The primary residential dwelling shall include an attached or detached private garage for not less than two (2) cars. All garages are encouraged to open to the side or rear of the Lot. If garage doors do face to the front of the Lot, then the garage doors shall be set back at a minimum of fifteen (15) feet from the front plain of the house closest to the street and such garage doors shall be constructed of wood and no garage door shall be larger of ten (10) feet wide with a minimum of two garage doors. No carports shall be erected or permitted on any Lot without the express approval of the Architectural Committee.

#### 4.09 WINDOWS.

All windows on the exterior walls facing a street shall be of wood, clad wood or vinyl construction. Aluminum or metal windows shall be allowed on exterior walls not facing a street.

#### 4.10 LANDSCAPING.

All front yards shall be fully landscaped. All landscaping plans must be approved by the Architectural Control Committee prior to occupancy and must be completed within sixty (60) days of occupancy. All front yards shall be fully landscaped with sprinklers, sod or beds. All rear yards shall be landscaped with sprinklers, sod or beds at a minimum of thirty-five (35) feet from the rear of the back wall.

#### 4.11 FENCING.

All fences must be approved by the Architectural Committee before installation. Type, height, and location must be submitted in writing for approval. All fences shall be constructed of wrought iron or stone. No chain link or wood privacy fencing will be allowed.

#### 4.12 PROPANE GAS.

Any propane tank must either be buried or covered by masonry.

### ARTICLE V

#### THE ESTATES AT EANES CREEK PROPERTY OWNERS ASSOCIATION

##### 5.01 ORGANIZATION.

The Estates at Eanes Creek Property Owners' Association, Inc. shall be a nonprofit Texas corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate and Bylaws and in this Declaration. Neither the Certificate nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation of Subassociations, by provision therefore in Supplemental Declarations executed and recorded by Declarant, or as to lands owned by a Subdeveloper, by such Subdeveloper, to own, develop, assess, regulate, operate, maintain or manage portions of the Property subject to such Supplemental Declarations or to own, develop or control portions thereof for the common use or benefit of Owners and occupants of lands in the portions of the Property subject to such Supplemental Declarations.

##### 5.02 MEMBERSHIP.

Only the Owners defined in Subparagraph (i) of Section 5.03(A) herein below, and Declarant, shall be Members of the Association; provided, however, that no person shall be a Member of the Association by reason of ownership of lands used for public school or governmental or quasi-governmental purposes, or by reason of ownership of any park, public land, road, easement, right-of-way, mineral interest, mortgage or deed of trust. Each Owner as defined in the preceding sentence shall automatically be a Member of the Association without the necessity of any further action on his or her part, and Association membership shall be appurtenant to and shall run with the property interest ownership which qualifies the Owner thereof for membership. Membership may not be severed from, or in any way transferred,

pledged, mortgaged, or alienated except together with the title to the property interest, ownership of which qualifies the Owner thereof for membership, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void.

### 5.03 VOTING RIGHTS.

#### (A) Classes of Membership; Declarant's Control Period.

The right to cast votes, and the number of votes which may be cast, for election of members to the Board of Directors of the Association and on all other matters to be voted on by the Members shall be calculated as follows. The Association shall have two classes of voting membership:

(i) Class A Members. Class A Members shall be all Owners other than Declarant. Class A Members shall be entitled to one vote for each Lot owned on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board in accordance with the provisions of this Declaration.

(ii) Class B Member. The Class B Member shall be Declarant. Declarant shall be entitled to seven (7) votes for each Lot owned by the Declarant until the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership ("Declarant's Control Period"). After the expiration of Declarant's Control Period, Declarant shall be entitled to one vote for each Lot owned. If Declarant transfers or conveys any Lots owned by it to Russell Eppright Homes, then Russell Eppright Homes shall be entitled to seven (7) votes per Lot owned by it.

If at any time after the expiration of Declarant's Control Period, additional land is added to the Property or additional Lots are created by resubdivision of the Lots within the Property, Declarant and/or Russell Eppright Homes shall then again be entitled to seven (7) votes for each Lot owned and Declarant's Control Period shall automatically be reinstated and continue until such time as the total votes outstanding in the Class A membership again is equal the total votes outstanding in the Class B membership.

#### (B) Joint or Common Ownership.

If any Lot is held jointly or in common by more than one Person, the Owners thereof shall designate, in writing, one Person or Owner who shall be entitled to cast such vote and no other Person shall be authorized to vote in behalf of such Lot. A copy of such written designation shall be filed with the Board before any such vote may be cast, and, upon the failure of the Owner thereof to file such designation, such votes shall neither be cast nor counted for any purpose whatsoever.

(C) **Proxy Voting.**

Any Owner, including Declarant, may give a revocable written proxy to any Person authorizing the latter to cast the Owner's vote(s) on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws, but no such proxy shall be valid for a period greater than eleven (11) months.

(D) **Cumulative Voting.**

The cumulative system of voting shall not be allowed.

**5.04 MEETINGS.**

Except as provided otherwise in Section 5.03 of this Declaration, any action to be taken at a Member meeting may be taken at any legally convened meeting of the Members upon the affirmative vote of the members having a majority of the total votes present at such meeting in person or by proxy.

**5.05 DUTIES OF THE ASSOCIATION.**

Subject to and in accordance with The Estates at Eanes Creek Restrictions, the Association shall have and perform each of the following duties for the benefit of the Members of the Association.

(A) **Association Property.**

- (1) Ownership and Control. To accept, own, operate and maintain all Common Areas, private streets, or other property that may be conveyed or leased to it, together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association.
- (2) Dissolution. To pay over or convey, upon dissolution of the Association, the assets of the Association to one or more exempt organizations of the kind described in Section 501(c) of the Internal Revenue Code of 1954, as amended from time to time.
- (3) Repair and Maintenance. To maintain in good repair and condition all lands, Improvements, and other Association Property owned by or leased to the Association.

- (4) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

**(B) Insurance.**

To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount. Without limiting the generality of the preceding sentence, such policies of insurance shall include:

- (1) Fire and extended coverage insurance on all Improvements owned by or leased to the Association as deemed reasonable and necessary. Such insurance shall insure the Association and mortgagees, as their interest may appear. As to each such policy which will not be thereby voided or impaired, the Association hereby waives and releases all claims against the Board and Declarant, and the officers, agents and employees of each, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but such waiver shall not extend to acts of gross neglect or willful misconduct. If the foregoing exculpatory clause is held to be invalid, then the liability of the insurance company shall be primary, and the liability of the Board, Declarant, and the officers, agents, and employees of the Board and of Declarant shall be secondary.
- (2) Worker's Compensation insurance to the extent reasonably necessary to comply with any applicable laws.
- (3) Such other insurance, including bodily injury liability insurance, indemnity and other bonds, as the Board shall deem reasonably necessary or expedient to carry out the Association functions.



**(C) The Estates at Eanes Creek Rules.**

To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such The Estates at Eanes Creek Rules, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association Property. Without limiting the generality of the foregoing sentence, such The Estates at Eanes Creek Rules may set dues and fees; prescribe the regulations governing the operation and use of Common Areas and Association Property; and to permit and enforce speed and traffic controls, use of vehicles, and parking and safety restrictions in all Common Areas within the Property.

**(D) Architectural Committee.**

To appoint and remove members of the Architectural Committee as provided in Section 8.02 hereof, and to insure that at all times there is available a duly constituted and appointed Architectural Committee. The Board may incorporate such Committee as a Texas nonprofit corporation.

**(E) Enforcement.**

To enforce, in its own behalf and in behalf of all Owners, the covenants, conditions, and restrictions set forth in this Declaration, under an irrevocable agency (hereby granted) coupled with an interest, as beneficiary of said covenants, conditions, and restrictions, and as assignee of Declarant; and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of The Estates at Eanes Creek Restrictions. The Board shall be authorized to institute litigation, settle claims, enforce liens and take such action as it may deem necessary or expedient to enforce the provisions of The Estates at Eanes Creek Restrictions; provided however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns or Russell Eppright Homes, its successors or assigns.

**(F) Financing.**

To execute mortgages and deeds of trust, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Association, and to accept lands, whether or not improved, from Declarant subject to such mortgages and deeds of trust. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Association. The mortgage, deed of trust, or other security interest given to secure repayment of any debt may consist of a first or second or other junior lien, as shall be deemed appropriate by borrower, whether Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such deed of trust or other security instrument may be retired from revenues generated by dues, use fees, assessment of the Members of the Association, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case

may be, but subject to the limitations imposed by this Declaration.

**(G) Audit.**

To provide at the direction of the Board an annual audit by an independent certified public accountant of the accounts of the Association and to make such audit available for inspection and review by Association Members during normal business hours at the principal office of the Association. Any Member may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association by a certified public accountant provided that such auditor inspection is made during normal business hours and without unnecessary interference with the operations of the Association.

**(H) Other.**

To carry out all duties of the Association as set forth in The Estates at Eanes Creek Restrictions.

**5.06 POWERS AND AUTHORITY OF THE ASSOCIATION.**

The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association shall have the power and authority at all times:

**(A) Assessments.**

To levy Assessments as provided in Article VIII, herein below. An "Assessment" is defined as that sum which must be levied in the manner and against the Property set forth in Article IX herein below in order to raise the total amount for which the levy in question is being made.

**(B) Right of Entry and Enforcement.**

To enter onto any Lot or Common Area, for the purpose of enforcing, by peaceful means, The Estates at Eanes Creek Restrictions, or for the purpose of maintaining or repairing any joint use private driveway reflected on any plat of the Subdivision, any Common Area, Improvement, private street, or other facility to conform to The Estates at Eanes Creek Restrictions. The Association shall also have the power and authority from time to time, in its own name and on its own behalf, or in the name of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of The Estates at Eanes Creek Restrictions.

**(C) Manager.**

To retain and pay for the services of a person or firm (the "**Manager**") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any of their duties, powers and functions to the Manager. The Owners hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

**(D) Legal and Accounting Services.**

To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of its property, the enforcement of The Estates at Eanes Creek Restrictions, or The Estates at Eanes Creek Rules, or in the performance of any other duty, right, power, or authority of the Association.

**(E) UTILITY SERVICES.**

To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities, services and maintenance for the property of the Association.

**(F) Other Areas.**

To maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, paths, trails, ponds, lakes, and other areas of the Property owned by or leased to the Association, and to perform the obligations of the Association under any license agreement or similar agreement entered with the County or the City in connection with the use and maintenance of medians within in any public street or road right-of-way located within or immediately adjacent to the Subdivision.

**(G) Recreational Facilities.**

To own and operate any and all types of facilities for both active and passive recreation.

**(H) Other Services and Properties.**

To obtain and pay for any other property and services, including but not limited to fire protection, security, street lighting and emergency medical services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for, pursuant to applicable law, the terms of The Estates at Eanes Creek Restrictions, or the Certificate or Bylaws of the Association.

**(I) Construction on Association Property.**

To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.

**(J) Contracts.**

To enter into contracts with Declarant with Subassociations, Subdevelopers, and other Persons on such terms and provisions as the Board shall determine. As to any such contract into which the Association may enter with a Subassociation, the Association may make, establish and promulgate, and in its discretion may amend or repeal and re-enact, rules of the kind described in Section 5.05(D) with respect to the Subassociation's property.

**(K) Permits.**

To obtain and hold any and all types of permits and licenses as may be required for any of the activities required or permitted to be taken by the Association.

**(L) OWNERSHIP OF PROPERTY.**

To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.

**(M) Subsidiaries.**

To create a subsidiary or other association to perform the rights, powers, duties, obligations, or functions which might prevent the obtaining of a tax exemption, if it shall ever be ruled or held that an exemption under the Internal Revenue Code is unavailable to the Association by this Declaration; or alternatively, the Association may retain the rights, powers, duties, obligations, or functions which prevent the obtaining of the tax exemption and transfer some or all of its other rights, powers, duties, obligations, and functions to such subsidiary or other association.

**(N) Exterior Maintenance.**

To enter on any Lot, whether improved or unimproved, and to repair, maintain, cleanup and restore such Lot and/or the exterior of any building or other Improvements erected thereon, in the event any Owner of any Lot or Improvement within the Property shall fail to maintain the premises and the Improvements situated thereon in a manner satisfactory to the Association. No such entry, repair, maintenance, or other action shall be taken pursuant to this paragraph until approval has been gained by a two-thirds (2/3) vote of the Board. Any costs or expenses incurred in connection with such exterior maintenance or cleanup of any Lot shall be added to and become a part of the Assessment to which such Lot is subject. The Board shall be authorized to add all such costs to the next regular billing of Assessments for such Lot.

**(O) Diseased Trees.**

To enter upon any Lot or other part of the Property at any time to inspect for, prevent and control diseased trees and other plant life and insect infestation of trees and other plant life. If any diseased or insect-infested trees or other plant life are found, the Association may spray, remove diseased trees and other plant life, and take such other remedial measures as it deems expedient. The cost thereof applicable to privately owned Lots may be levied by the Association as a specific Assessment against such Lots pursuant to Section 8.10 hereof.

**5.07 INDEMNIFICATION.**

**(A) Third Party Actions.**

The Association may indemnify any Person who was or is a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee, servant or agent of the Association, against expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such Person in connection with such action, suit or proceeding if it is found and determined by the Board or court, that such Person (1) acted in good faith and in a manner such Person reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe such Person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Person did not act in good faith or in a manner which such Person reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

**(B) Derivative Actions.**

The Association may indemnify any Person who was or is a party to any threatened, pending or completed action, suit or proceeding brought by or in the right of the Association by reason of the fact that such Person is or was a director, officer, employee, servant or agent of the Association, against expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such Person in connection with the defense or settlement of such action, proceeding or suit if it is found or determined that such Person acted in good faith and in a manner such Person reasonably believed to be in, or not opposed to, the best interest of the Association. No indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for negligence or misconduct in the performance of such Person's duty to the Association unless (and only to the extent) the court in which such action, proceeding or suit was brought shall determine that, despite the adjudication of liability and in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity.

**(C) Determination.**

An indemnification which the Association has elected to provide under Paragraph (A) or (B) of this Section (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the officer, director, employee, servant or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraph (A) or (B) of this Section. Such determination shall be made (a) by the Board by a majority vote of directors who were not parties to such action, suit or proceeding; or (b) if obtainable, by independent legal counsel in a written opinion; provided, however, that if a director, officer, employee, servant or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph (A) or (B) of this Section, or in defense of any claim, issue or matter therein, then to the extent that the Association has elected to provide indemnification, he shall automatically be indemnified against expenses (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by him in connection therewith without the necessity of any such determination that he has met the applicable standard of conduct set forth in Paragraph (A) or (B) of this Section.

**(D) Payment in Advance.**

Expenses incurred in defending a civil or criminal action, suit or proceeding may, in the discretion of the Board, be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board as provided in Paragraph (C) of this Section upon receipt of an undertaking by or on behalf of the director, officer, employee, servant or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Section.

**(E) Insurance.**

The Board may purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee, servant or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

**(F) Other Coverage.**

The indemnification provided by this Section shall not be deemed exclusive of any other rights to which anyone seeking indemnification may be entitled under this Declaration, Texas law, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and may continue as to a Person who has ceased to be a director, officer, employee, servant or agent and may inure to the benefit of the heirs and personal representatives of such a Person.

**ARTICLE VI  
ASSOCIATION PROPERTY**

**6.01 USE.**

Each Owner of a Lot, the members of such Owner's family who reside in the residence located on the Lot, and each lessee of a residence located on a Lot and the members of such lessee's family who reside in the residence located on the Lot shall be entitled to use the Property of the Association subject to:

- (a) The provisions of The Estates at Eanes Creek Restrictions, and each Person who uses any property of the Association, in using the same, shall be deemed to have agreed to comply therewith;
- (b) The right of the Association to charge reasonable dues and use fees;
- (c) The right of the Association to suspend the rights to the use of any Association Property or any Common Area by any Member or lessee and their respective families, guests and invitees for any period during which any Assessment against the Member's property remains past due and unpaid; and, after notice and hearing by the Board, the right of the Association to invoke any remedy set forth above in Section 3.09 for any other infraction of The Estates at Eanes Creek Restrictions;
- (d) The right of the Association to require that security deposits be made and kept with the Association to secure all sums, and to guarantee performance of all duties, due and owing or to become due and owing to the Association;
- (e) Such rights to use Association Property as may have been granted by the Association or prior Owners of property of the Association to others; and
- (f) Such covenants, conditions, and restrictions as may have been imposed by the Association or prior Owners on property of the Association.

**6.02 DAMAGES**

Each Member and lessee described above in Section 6.01 shall be liable to the Association for any damage to property of the Association which may be sustained by reason of the negligent or intentional misconduct of such Person or of the Owner or lessee thereof to use Association Property, is owned or leased jointly or in common, the liability of all such joint or common Owners or lessees shall be joint and several. The amount of such damage may be assessed against such Person's real and personal property on or within the Property, including the leasehold estate of any lessee, and may be collected as provided in Article VIII below for the collection of Assessments.

### 6.03 DAMAGE AND DESTRUCTION.

In the case of destruction of or damage to Association Property by fire or other casualty:

#### (A) Reconstruction --Minor.

If the cost of repairing or rebuilding does not exceed the sum of One Hundred Thousand and No/100 Dollars (\$100,000) of the amount of the available insurance proceeds, such insurance proceeds shall be paid to the Association, which shall contract to repair or rebuild the Association Property so damaged. Should the insurance proceeds be insufficient to pay all of the costs of repairing or rebuilding the damage, the Association may levy a special Assessment to make good any deficiency.

#### (B) Reconstruction - Major.

If the cost of repairing or rebuilding exceeds One Hundred Thousand and No/100 Dollars (\$100,000) and the available insurance proceeds then:

The insurance proceeds shall be paid to the Board, to be held in separate trust for the benefit of the Members, as their respective interests shall appear. The Association may, on behalf of the Members, enter into an agreement with a bank or other corporate trustee upon such terms as the Board may approve consistent herewith, for the purpose of receiving, holding or disbursing such proceeds.

The Association shall obtain firm bids from two (2) or more responsible contractors to repair or rebuild any or all portions of the damaged Property and shall call a special meeting of the Members to consider such bids. At such special meeting, the Members may, by a three-fourths (3/4) majority of the votes cast at such meeting elect to reject such bids and not rebuild. Failure to reject such bids shall be deemed acceptance of such bid as may be selected by the Board. If a bid is accepted, the Association may levy special Assessments on the Members to make up any deficiency between the total insurance proceeds and the contract price of repairing or rebuilding the Association Property and such Assessments and all insurance proceeds shall be paid to the Board to be used for such repairing or rebuilding. Such Assessments may be made due on such dates as the Association may designate. The Association may borrow money to pay the aforesaid deficiency and may secure such borrowing by an assignment of its right to collect such Assessments, by a pledge of or mortgage on any personal property owned by the Association or held by it in trust for the Members, or on any other real property owned by the Association. If the Members elect not to rebuild, the proceeds, after payment for demolition of damaged structures and clean-up of the property, shall be retained by the Association for use in performing its functions under this Declaration.

#### (C) Decision Not to Reconstruct.

If the Board determines not to rebuild any property so destroyed or damaged, or to build facilities substantially different from those which were destroyed or damaged, it shall call a



special meeting of the Members to consider such decision. If the Members, by three-fourths (3/4) of the votes cast at such meeting, elect to ratify such decision, the Board shall act accordingly; but if the Members do not by such percentage elect to ratify such decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility pursuant to Paragraph (A) or (B), as the case may be of this Section.

#### 6.04 TRANSFER OF COMMON AREAS TO ASSOCIATION.

Declarant will transfer and convey to the Association all Common Areas and private streets within any developed phase in the Subdivision upon completion of all development in such phase by Declarant. For purposes of this Section, the development of any phase shall be considered complete when the utilities have been installed, all streets paved and all landscaping or development of Common Areas, if any, have been fully accomplished.

### ARTICLE VII FUNDS AND ASSESSMENTS.

#### 7.01 LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.

Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) regular Assessments or charges, and (b) special Assessments for capital improvement, such Assessments to be established and collected as hereinafter provided. In addition to the foregoing, and where applicable, each such Owner is further deemed to covenant and agree to pay to the Association any Assessment benefiting a specific area owned by such Owner as provided in Section 7.10 below. The regular annual and special Assessments, and all other amounts due under the Declaration, Bylaws, Rules, or any other Restriction, together with interest, costs and reasonable attorneys' fees, shall to the full extent permitted by law, be a charge of the land and the payment thereof shall be secured by a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' 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.

#### 7.02 PURPOSE OF ASSESSMENTS.

The Assessments levied by the Association shall be used to maintain, preserve and operate the Association Property for the benefit of the Members, and to carry out the powers, duties and functions of the Association as set forth in Article VI of this Declaration. Such purposes shall also include, but not be limited to, providing utility services to the Association Property, paying ad valorem taxes thereon, and maintaining and preserving said property as well as for the creation of reasonable reserves for future maintenance, preservation, operation and/or capital improvements or expansion of Association Property.

### 7.03 PROPERTY SUBJECT TO ASSESSMENT.

The Association shall levy one (1) Assessment against each platted Lot, whether or not improved.

### 7.04 EXEMPT PROPERTY.

No Assessment shall be levied against Declarant's platted, unsold Lots, or any other property, whether or not platted or otherwise improved, held or owned by Declarant. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the Assessments created herein. However, no land or Improvements devoted to dwelling use shall be exempt from said Assessments.

### 7.05 ASSESSMENT PRORATED.

Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

### 7.06 PERSONAL LIABILITIES.

Each Owner shall be personally liable for an Assessment and the same shall become a lien against each Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

### 7.07 THE ESTATES AT EANES CREEK MAINTENANCE FUND.

The Board shall establish a fund (the "The Estates at Eanes Creek Maintenance Fund") into which shall be deposited all moneys paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes related to the areas and Improvements owned by or leased to the Association, or subject to The Estates at Eanes Creek Restrictions for maintenance or operation by the Association or otherwise for purposes authorized by this Declaration, and as it may from time to time be amended. To the extent compatible with current operating needs, excess funds of the Association shall be maintained in interest-bearing accounts or securities.

### 7.08 REGULAR ANNUAL ASSESSMENTS.

Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under The Estates at Eanes Creek Restrictions, including a reasonable provision for contingencies and appropriate

replacement reserves. Except in the case of special Assessments as provided for herein, uniform and equal Assessments sufficient to pay such estimated expenses shall then be levied. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular assessments shall be due and payable to the Association the first of day of each calendar year, or in such other manner as the Board, in its sole and absolute discretion, may designate.

#### **7.09 SPECIAL ASSESSMENTS.**

In addition to the regular annual Assessments provided for above in Section 7.08, the Board may levy in any Assessment year special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair, or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereto.

#### **7.10 ASSESSMENT BENEFITING SPECIFIC AREAS.**

(a) The Association shall have the authority to levy Assessments against each Lot for which access is provided by a Joint Use Driveway Easement as reflected on any plat of the Subdivision, which Assessments shall be expended solely for the maintenance, operation, repair, and replacement of the private driveway providing access to the Lots for which such Assessments are levied. The amount of the Assessment for each Lot shall be determined by the costs related to the private driveway providing access to such Lot and shall be levied in proportion to the number of Lots for which such private driveway provides access so that each such Lot shall be responsible for an equal share of the costs of such driveway. Any such Assessment shall constitute a lien on the Lots so assessed and such liens shall be enforced in the same manner and to the same extent as provided in this Article.

(b) The Association shall also have authority to levy Assessments against specific local areas, or private streets, and Improvements which Assessments shall be expended for the benefit of the properties so assessed. The Assessments levied under this Section shall be levied in proportion to the benefits conferred or to be conferred, as determined by the Board, and, therefore, the amount levied against each parcel of land or Improvement need not be equal. Any such Assessment shall constitute a lien on the properties so assessed and such liens shall be enforced in the same manner and to the same extent as provided in this Article.

#### **7.11 COMMENCEMENT AND COLLECTION OF REGULAR ANNUAL ASSESSMENTS.**

The initial regular, annual Assessment is hereby established by Declarant to be the sum of Seven Hundred Dollars (\$700.00) per Lot and shall be due and payable by the Owner on the first calendar day of the year following the sale of any Lot. A prorated amount for the remainder of the year in which the Lot is purchased shall be paid upon sale of the Lot. The Board shall thereafter fix the amount of the regular annual Assessments against each Lot at least thirty (30) days in advance of each January Notice of Assessments shall be sent to every Owner subject

thereto.

#### 7.12 NONPAYMENT: LIENS, REMEDIES OF THE ASSOCIATION.

Any Assessment or other amounts due not paid within thirty (30) days after the due date shall be deemed in default. The amount of any such Assessment or other amounts due, whether regular or special, assessed against any Lot plus interest on such Assessment or other amounts due at such lawful rate as the Board may designate from time to time, and the costs of collecting the same, including reasonable attorneys' fees, shall be a lien upon such Lot and the Improvements thereon. Such lien shall be prior to any declaration of homestead. The Association may either (a) bring an action at law against the Owner personally obligated to pay the same, or (b) foreclose said lien against the Lot non-judicially (in a like manner as a mortgage on real property) or judicially, and the Association is given a power of sale for such purposes, or (c) both. No Owner may waive or otherwise escape liability for any Assessment or other amounts due by nonuse of Association Property, or any other Common Area or by the abandonment of any Lot. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request and for a reasonable charge. The enforcement and foreclosure of such liens shall be subject to the limitations and requirements set forth in the Texas Residential Property Owners Protection Act (Section 209.001 et seq of the Texas Property Code) as the same may be amended, superceded or replaced from time to time.

#### 7.13 MORTGAGE PROTECTION.

Notwithstanding any other provision of The Estates at Eanes Creek Restrictions, no lien created under this Article VII or under any other article of this Declaration, nor any lien arising by reason of any breach of The Estates at Eanes Creek Restrictions, nor the enforcement of any provision of this Declaration or of any Supplemental Declaration shall defeat or render invalid the rights of the beneficiary under any recorded mortgage or deed of trust of first and senior priority now or hereafter made in good faith and for value. However, after the foreclosure of any such first mortgage or deed of trust or after conveyance in lieu of foreclosure, such Lot shall remain subject to The Estates at Eanes Creek Restrictions and shall thereafter be liable for all regular and special Assessments levied by the Association.

#### 7.14 EFFECT OF AMENDMENTS ON MORTGAGES.

No amendment of Section 7.13 of this Declaration shall affect the rights of any beneficiary whose mortgage or deed of trust has the first and senior priority as in Section 7.13 provided and who does not join in the amendment thereof, provided that such mortgage or deed of trust is recorded in the mortgage records of Travis County, Texas, prior to the recordation of such amendment; provided however, that after foreclosure, or conveyance in lieu of foreclosure the Lot which was subject to such mortgage or deed of trust shall be subject to such amendment.

#### 7.15 SUBORDINATION.

The lien for Assessments provided for herein shall be subordinated to the lien of any first lien mortgage. Sale or transfer of any Lot subject to unpaid Assessments shall not affect the assessment lien. However, the sale or transfer of any Lot subject to assessment pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot subject to Assessment from liability for any Assessments thereafter becoming due or from the lien thereof.

### ARTICLE VIII ARCHITECTURAL COMMITTEE

#### 8.01 NUMBER OF MEMBERS.

The Architectural Committee shall consist always of either three (3) or five (5) members. The initial members of the Committee shall be appointed by Declarant.

The Board may reduce the number of members of the Committee to three (3) and increase it to five (5) as often as it wishes. Each member of the Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause.

#### 8.02 APPOINTMENT OF MEMBERS.

During Declarant's Control Period, the Declarant shall have the exclusive right to appoint and remove all members of the Architectural Committee. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee without Declarant's consent. Notwithstanding anything herein to the contrary, during Declarant's Control Period, Declarant shall have the right, in Declarant's sole and absolute discretion, to veto any Committee action that directly affects the planning, design, construction or development of any Lot owned by Declarant. Declarant must exercise its veto within ten (10) days after it receives notice of the Architectural Committee action affecting a Lot owned by Declarant.

#### 8.03 ADOPTION OF RULES.

The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties. The Committee Rules may provide requirements and standards with respect to any and all matters with which the Committee is charged in this Declaration. A rule adopted by the Architectural Committee shall not be in effect until approved by the Board. The Committee may adopt procedural and substantive rules as provided herein not in conflict with this Declaration applicable to distinct areas of the Property.

#### 8.04. POWERS AND DUTIES OF ARCHITECTURAL COMMITTEE.

The Architectural Committee shall have all powers and duties conferred or imposed upon it by this Declaration and all inherent powers necessary or proper in the performance of its duties, as set forth in this Declaration or the Committee Rules. In addition thereto, and without limiting the generality of the foregoing, the Architectural Committee shall have the following specific powers and duties:

- (a) To approve all Plans and Specifications for any Improvements constructed within the Property;
- (b) To review and inspect all construction or proposed construction within the Property;
- (c) To set such height elevations and setback requirements as it deems necessary or proper whether or not such limitations are contained on the face of any applicable plat;
- (d) To prescribe for any given section or area of development certain building or architectural restrictions, construction codes, methods of development, limitations on types of building materials, placement of structures, colors, standards and requirements for all aspects of construction, drainage requirements, or other similar restrictions or limitations; to review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area and The Estates at Eanes Creek generally;
- (e) To review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features;
- (f) To review and approve or disapprove Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of compliance of the Plans and Specifications with The Estates at Eanes Creek Restrictions;
- (g) To control the spacing or orientation of all residential dwellings, buildings, garages, accessory buildings, or other Improvements of any type whatsoever, with relation to the front and side yard orientation thereof;
- (h) To prescribe design or construction criteria for driveways, fences, walls, landscaping, or other Improvements;

- (i) To specify types, colors, quality of roofing materials to be applicable to any given area or street;
- (j) To prescribe the terms and conditions under which Association and private property may be used during construction;
- (k) To prescribe development criteria for various types of single-family developments including zero lot line development;
- (l) To require and issue written approvals as a condition for commencement of construction of any Improvement;
- (m) To prescribe and charge reasonable fees for its services;
- (n) To prescribe and charge reasonable fees for use of any Association Property that is in excess of normal use by residents; and
- (o) To prescribe and charge reasonable deposits to insure compliance with the Committee Rules.

#### 8.05 REVIEW OF PROPOSED CONSTRUCTION.

Whenever in this Declaration or in any Supplemental Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as provided in Sections 9.07 and 9.08 below, prior to commencement of any construction of any Improvement in the Property, the Plans and Specifications therefore shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Committee has approved such Plans and Specifications in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee.

The Committee may review and approve or disapprove all Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of compliance or lack of compliance with the Committee Rules. The Committee shall take into consideration the compliance or lack of compliance with the Committee Rules and all matters with which it is charged in this Declaration. Any action of the Committee, including approval of Plans and Specifications and any Improvement constructed pursuant thereto, shall mean only that the proposed Improvement is satisfactory to the Committee. Such action of the Committee shall not be an opinion, approval, warranty or representation by the Committee as to whether the Improvement will satisfy all of the requirements of this Declaration; that the Improvement will be structurally sound; that it will

comply with any applicable building code; that it will be free from damage from wind, rain or flood; that it will not encroach on any easements; or that it will not divert surface water in a manner not allowed by law.

#### **8.06 MEETINGS OF THE COMMITTEE.**

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may, by resolution, unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8.10 herein below. In the absence of such designation, the vote of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

#### **8.07 NO WAIVER OF FUTURE APPROVALS.**

The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different Person.

#### **8.08 INSPECTION OF WORK; NONCOMPLIANCE.**

The Committee may inspect all work in progress and any completed Improvement. If the Committee determines the work or Improvement does not comply with The Estates at Eanes Creek Restrictions, the Committee may give notice of any noncompliance to the Owner specifying in reasonable detail the particulars of the noncompliance. No work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board should ultimately find that noncompliance exists. If the Owner denies that such noncompliance exists, the Board shall conduct a hearing in accordance with the requirements of the Texas Residential Property Owners Protection Act, as it may be amended, superceded or replaced from time to time, at which hearing it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Assessment against such Owner and the Improvement in question and the Lot upon which the same is situated for reimbursement and the same shall constitute a lien upon such Lot and Improvement and be enforced as provided in this Declaration.

#### **8.09 NONLIABILITY OF COMMITTEE MEMBERS.**



Neither the Architectural Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of their being in any way connected with the performance of the Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its member or the Board or its member. as the case may be.

#### 8.10 VARIANCES.

The Architectural Committee may grant variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, or of any plat, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetics or environmental consideration may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration, or any plat shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration, or of any plat for any purpose except as to the particular property and in the particular instance covered by the variance.

#### 8.11 APPROVED BUILDERS & CONSTRUCTION DEADLINE

For construction of the primary dwelling and any other air-conditioned structure, Owners must utilize an approved builder. The Board shall maintain a list of approved builders, and Owners may also request approval of a builder not on the current approved list, which approval the Board may grant or deny in its sole discretion. All primary dwellings must be completed within 18 months from the start of construction. The architectural committee may place time limits in its discretion on the completion of structures other than the primary dwelling, and on the completion time for alteration of any structure.

### ARTICLE IX MISCELLANEOUS

#### 9.01 TERMS.

This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the Property and recorded in the appropriate records in the Office of the Clerk of Travis County, Texas.

## 9.02 AMENDMENT.

This Declaration may be amended as follows:

### (A) By Declarant.

This Declaration may be amended by Declarant, without the consent, approval or joinder by any other Owner, at any time and from time to time as long as Declarant owns at least one (1) Lot within the Property; and

### (B) By Owners.

Except as provided in Subsection (A), this Declaration may be amended by the recording in the Office of the County Clerk of Travis County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Board, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast pursuant to Section 5.03. Any Owner may indicate such Owner's approval of such proposed amendment either by consenting thereto in writing or by affirmative vote at a duly convened regular or special meeting of the Association.

## 9.03 UTILITY EASEMENTS.

The Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on the areas indicated on the plat as "easement" or such other areas as may be deemed by the Declarant to be necessary, sewer and other pipe-lines, conduits, wires and any public utility function beneath the surface of the ground, or above the surface with the approval of the Architectural Committee, with the right of access to the same at any time for the purposes of repair and maintenance.

- (a) Street light poles, if any, mailboxes or standards may be served by underground cable, and elsewhere throughout the Property, all supply lines shall be located underground. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in said easements.
- (b) Underground service cable to all houses which may be located on all Lots in said addition may be run from the most convenient service pedestal or transformer to the point of usage determined by the location and each said Lot; provided that upon the installation of such a service cable to a particular house, the supplier of electric service shall thereafter be deemed to have a definite, permanent, effective and exclusive right-of-way easement on said Lot, covering a five-foot (5') strip extending two and one-half feet (2.5') on each side of such service cable, extending from the service pedestal or transformer to the service entrance on said house.

- (c) The supplier of electric service, through its proper agents and employees shall at all times have right of access to all such easements shown on any plat for the purpose of installing, maintaining, removing or replacing any portion of said underground electric facilities so installed by it.
- (d) The Owner of each Lot shall be responsible for the protection of the underground electric facilities located on his Lot and shall prevent the alteration of grade or any construction activity which may interfere with said electric facilities. The utility company will be responsible for ordinary maintenance of underground electric facilities, but the Owner will pay for damage or relocation of such facilities caused or necessitated by acts of the Owner or his agents or contractors.
- (e) The foregoing covenants concerning underground electric facilities shall be enforceable by the supplier of electric service, and the Owner of each Lot agrees to be bound hereby.

**9.04 PRIVATE STREETS.** The Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on the areas indicated on the plat as a private street or security gate or such other areas as may be deemed by the Declarant to be necessary with the approval of the Architectural Committee with the right of access to the same at any time for the purposes of installation, operation, repair and maintenance. The Declarant further reserves the right to convert existing public streets to private streets for the purpose of providing private security, decorative pavers, landscaping, or other special features not normally found on public streets.

- (a) All private streets and security gates shall comply with the applicable regulations and the layout and design requirements of the municipality, or the County outside the ETJ of any municipality.
- (b) Any private streets and any security gates or devices controlling access to such streets will be owned and maintained by the Association.
- (c) The Association shall be responsible for any and all applicable taxes.
- (d) If a private street is needed for access to an adjacent property, the Association may enter into a joint access agreement with the adjacent property owner for use of the private street in accordance with any applicable regulations established by applicable municipality, or the county outside the ETJ of the municipality.
- (e) The foregoing covenants concerning private streets and security gates shall be enforceable by the Association. The Owner of each Lot agrees to be bound by the covenants, conditions and restrictions outlined herein and in within the Declaration..

This provision shall become moot should there be no private streets or security gates and Declarant does not exercise its right as set forth in this Section.

#### 9.05 NOTICES.

Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either in person or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such Person to the Association.

#### 9.06 INTERPRETATION.

The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Subdivision as set forth in The Estates at Eanes Creek Restrictions. This Declaration shall be construed and governed under the laws of the State of Texas.

#### 9.07 CONSTRUCTION ACTIVITIES.

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner, including Declarant, upon the Property; provided that when completed, such Improvements shall in all respects conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence; is in compliance with the provisions of this Declaration; and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provisions, including but not limited to any provision prohibiting temporary structures, may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction.

#### 9.08 EXEMPTION OF DECLARANT.

Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade; to construct and alter drainage patterns and facilities; to construct any and all other types of Improvements, sales and leasing offices and similar facilities; and to post signs incidental to construction, sales and leasing anywhere within the Property.

**9.09 ASSIGNMENT BY DECLARANT.**

Notwithstanding anything in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights and duties hereunder. Without in any way limiting the generality of the preceding sentence, Declarant may, upon application and showing of sufficient cause, exempt any Person from the control and jurisdiction of the Architectural Committee. Any such assignment by Declarant must be expressly set forth in writing, and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

**9.10 ENFORCEMENT AND NONWAIVER.**

**(A) Right of Enforcement.**

Except as otherwise provided herein, any Owner at his own expense, Declarant, and the Board shall have the right to enforce all of the provisions of The Estates at Eanes Creek Restrictions against any Lot within the Property and the Owners thereof. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The right of any Owner to so enforce such provisions shall be equally applicable without regard to whether the Lot (or other interest) of the Owner seeking enforcement or the Lot (or other interest) whereon or with respect to which a violation of such provisions is alleged, is initially set forth on Exhibit "A" or is hereafter subjected to this Declaration pursuant to Article II above.

**(B) Violation Nuisance.**

Every act or omission whereby any provision of The Estates at Eanes Creek Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at his own expense), Declarant, or the Board. However, only Declarant, the Board and the duly authorized agents of either of them may enforce by self-help any of the provisions of The Estates at Eanes Creek Restrictions, and then only if such self-help is preceded by reasonable notice to the Owner in question and after compliance with the requirements of the Texas Residential Property Owners Protection Act, as the same may be amended, superceded or replaced from time to time.

**(C) Violation of Laws.**

Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth in The Estates at Eanes Creek Restrictions.

**(D) Nonwaiver.**

The failure to enforce any provision of The Estates at Eanes Creek Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said The Estates at Eanes Creek Restrictions.

**(E) Lien.**

The Association shall have the right, when appropriate in its judgment and in compliance with all applicable laws, to claim or impose a lien upon any Lot in order to enforce any right or effect compliance with this Declaration.

**9.11 CONSTRUCTION.**

**(A) Restrictions Severable.**

The provisions of this Declaration and any other of The Estates at Eanes Creek Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions.

**(B) Singular Includes Plural.**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

**(C) Captions.**

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this 11 day of June, 2008.

DECLARANT

Bella Strada Development, Inc.,  
a Texas corporation

By: [Signature]  
Russell Eppright, President

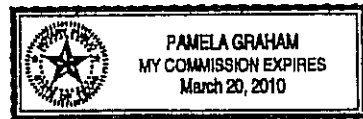
THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 11 day of June, 2008, by Russell Eppright President of Bella Strada Development, Inc.

[Signature]  
Notary Public, State of Texas

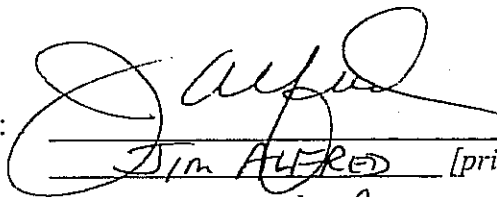
(seal)



CONSENT OF MORTGAGEE

Compass Bank, as the owner and holder of indebtedness secured by a deed of trust covering the Property, of record as Documents # \_\_\_\_\_ Official Records of Travis County, Texas, does hereby join in the execution of this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ESTATES AT EANES CREEK for the purpose of evidencing its consent hereto.

Executed this 11th day of JUNE, 2008.

By:   
\_\_\_\_\_  
JIM ALFRED [printed name & title]  
S.V.P.

THE STATE OF TEXAS       §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on this the 11 day of JUNE, 2008, by JIM ALFRED, as SVP of COMPASS BANK, on behalf of said entity.



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

(seal)

**AFTER RECORDING, PLEASE RETURN TO:**  
Russell Eppright  
6836 Bee Caves Road, Suite 400  
Austin, Texas 78746



**EXHIBIT A**

Werkenthin Section One (Volume 102, Pages 35-37) and Amended Plat of Lots 1 & 2,  
Block C of Werkenthin Section One (Document # 200000127)

# EXHIBIT B

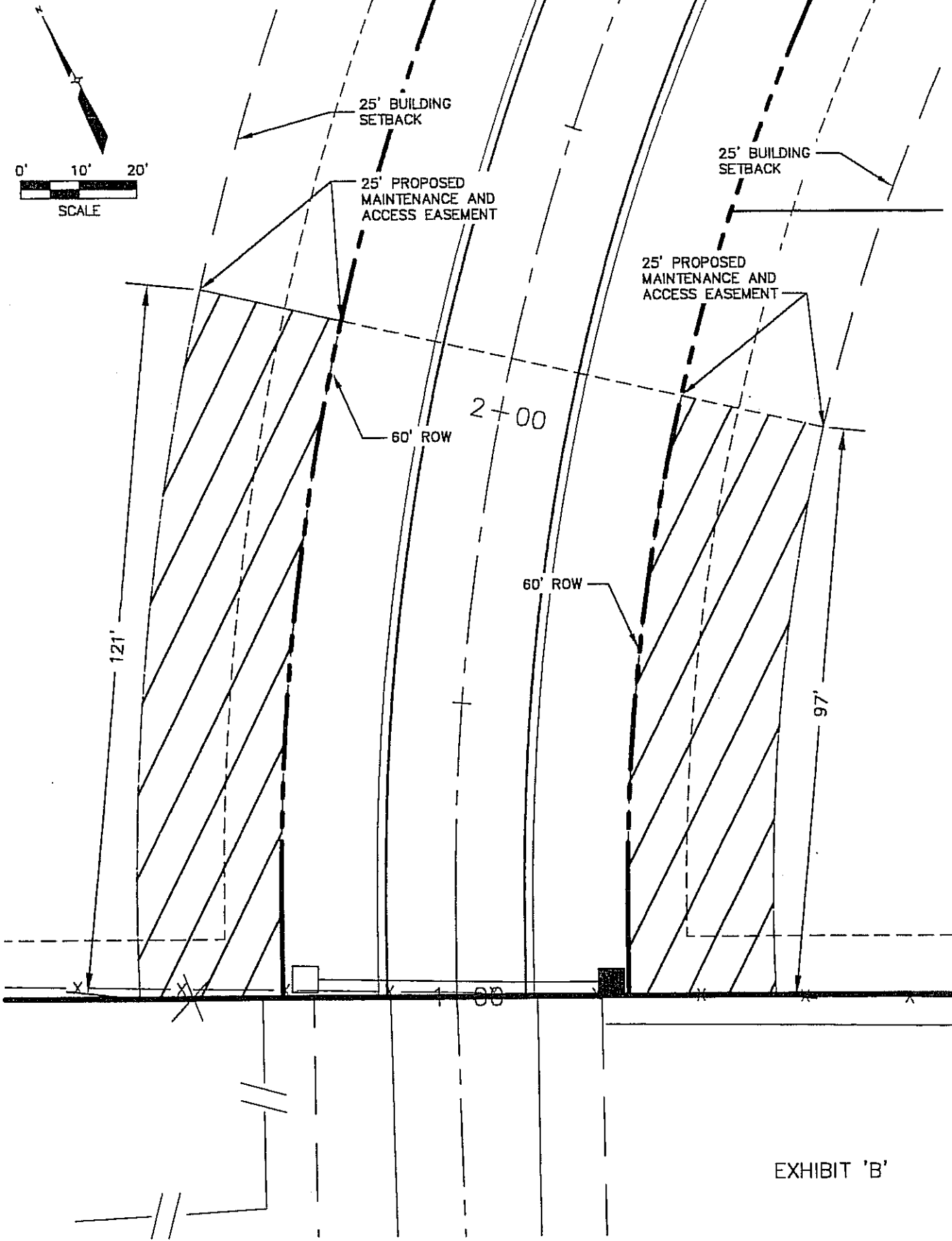


EXHIBIT 'B'

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 Jun 12 10:22 AM 2008098800

DAVISD \$216.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



PUBLIC UTILITY EASEMENT

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

THAT Bella Strada Development, Inc., of Travis County, Texas (called "Grantors" whether one or more), for good and valuable consideration, the receipt and sufficiency of which is acknowledged, do hereby GRANT and CONVEY unto the Public (called "Grantee") a public utility easement to construct, operate, maintain, replace, upgrade, inspect and repair the public utilities in, upon, over, under and across the following described property:

All that parcel of land, situated in Travis County, Texas, described in the attached EXHIBIT "A" and made a part hereof for all purposes ("Property").

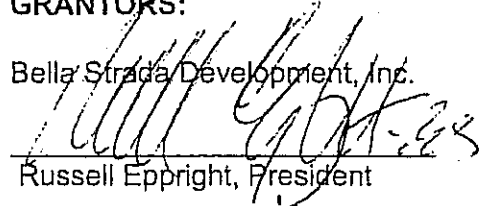
TO HAVE AND TO HOLD the same perpetually to the Public, with the right and privilege at any reasonable time to enter all or part of the Property to construct, operate, maintain, replace, upgrade, inspect and repair public utilities.

GRANTORS do hereby bind themselves, their respective heirs, successors, assigns and legal representatives to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Executed on 4/22, 2008.

GRANTORS:

Bella Strada Development, Inc.

  
\_\_\_\_\_  
Russell Eppright, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS

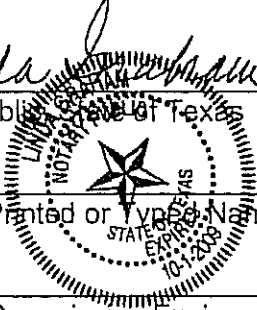
COUNTY OF TRAVIS

Before me, the undersigned authority, personally appeared Russell Eppright of Bella Strada Development, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given my hand and seal of office this 24 day of April, 2008.

*Sandra Johnson*

Notary Public, State of Texas



Notary's Printed or Typed Name

Notary's Commission Expires

After recording, return to:

Aaron C. Googins, P. E.  
King Engineering Associates, Inc.  
2211 South IH 35, Suite 200  
Austin, Texas 78741

EXHIBIT "A"

Bella Strada Development, Inc.

FIELD NOTES

FIELD NOTE DESCRIPTION OF 453 SQUARE FEET OF LAND OUT OF THE THOMAS J. ROBINSON SURVEY NO. 41, ABSTRACT NO. 670, TRAVIS COUNTY, TEXAS, ALSO BEING A PORTION OF PRESA ABAJO, (A STREET NOT OPEN OR BUILT) AS DEDICATED BY THE PLAT OF WERKENTHIN SECTION ONE, A SUBDIVISION OF RECORD IN BOOK 102, PAGES 35-37 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, LOTS ADJOINING THE SAID PRESA ABAJO BEING LOT 3, BLOCK A OF THE SAID WERKENTHIN SECTION ONE AND LOT 1, AMENDED PLAT OF LOTS 1 & 2, BLOCK C OF WERKENTHIN SECTION ONE, A SUBDIVISION OF RECORD IN DOCUMENT NUMBER 200000127 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, BOTH OF THE ADJOINING LOTS BEING CONVEYED TO BELLA STRADA DEVELOPMENT, INC. BY SPECIAL WARRANTY DEED DATED MARCH 19, 2007 OF RECORD IN DOCUMENT NUMBER 2007051058 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE SAID 453 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a MAG nail found at the southwest corner of Lot 1, Block A of the said Werkenthin Section One subdivision;

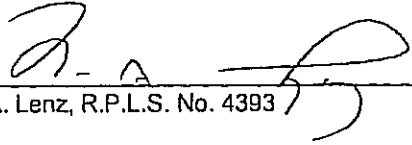
THENCE, N 29°32'10" E, a distance of 869.18 feet along the west line of the said Block A to a ½ inch diameter steel pin found on the west side of the 60 foot radius curved right-of-way for Presa Abajo, being at the westerly most corner of the said Lot 1, the same being the northerly most corner of the said Lot 3, for the **PLACE OF BEGINNING** of the herein described tract;

THENCE, with a curve to the right, along the common line between the said Presa Abajo and Lot 1, having a central angle of 34°00'25", a radius of 60.00 feet, an arc of 35.61 feet and a chord bearing and distance of N 46°05'35" E, 35.09 feet to a point;

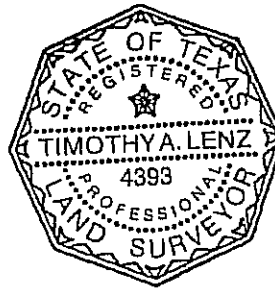
THENCE, S 29°32'10" W, a distance of 66.62 feet along a line ten (10) feet east of and parallel to the west line of the said Werkenthin Section One subdivision, to a point at the intersection with the common line between the said Presa Abajo and Lot 3;

453 Square Feet  
Public Utility Easement  
Page 2 of 2

THENCE, with a curve to the right, along the common line between the said Presa Abajo and Lot 3, having a central angle of 33°22'55", a radius of 60.00 feet, an arc of 34.96 feet and a chord bearing and distance of N 12°40'10" E, 34.47 feet to the **PLACE OF BEGINNING**, containing 453 square feet of land, more or less.

  
Timothy A. Lenz, R.P.L.S. No. 4393

Lenz & Associates, Inc.,  
1714 Fort View Road, Suite 200  
Austin, Texas 78704  
(512) 443-1174



BEARING BASIS  
Monumented West Line of Werkenthin Section One  
( N 29°32'10" E per Bk 102, Pg 35 Travis Co Plat Records)  
TCAD 01-3134-0312 & 01-3134-0628  
Austin Grid C-27 & C-28

(WerkenthinPUE1.doc)

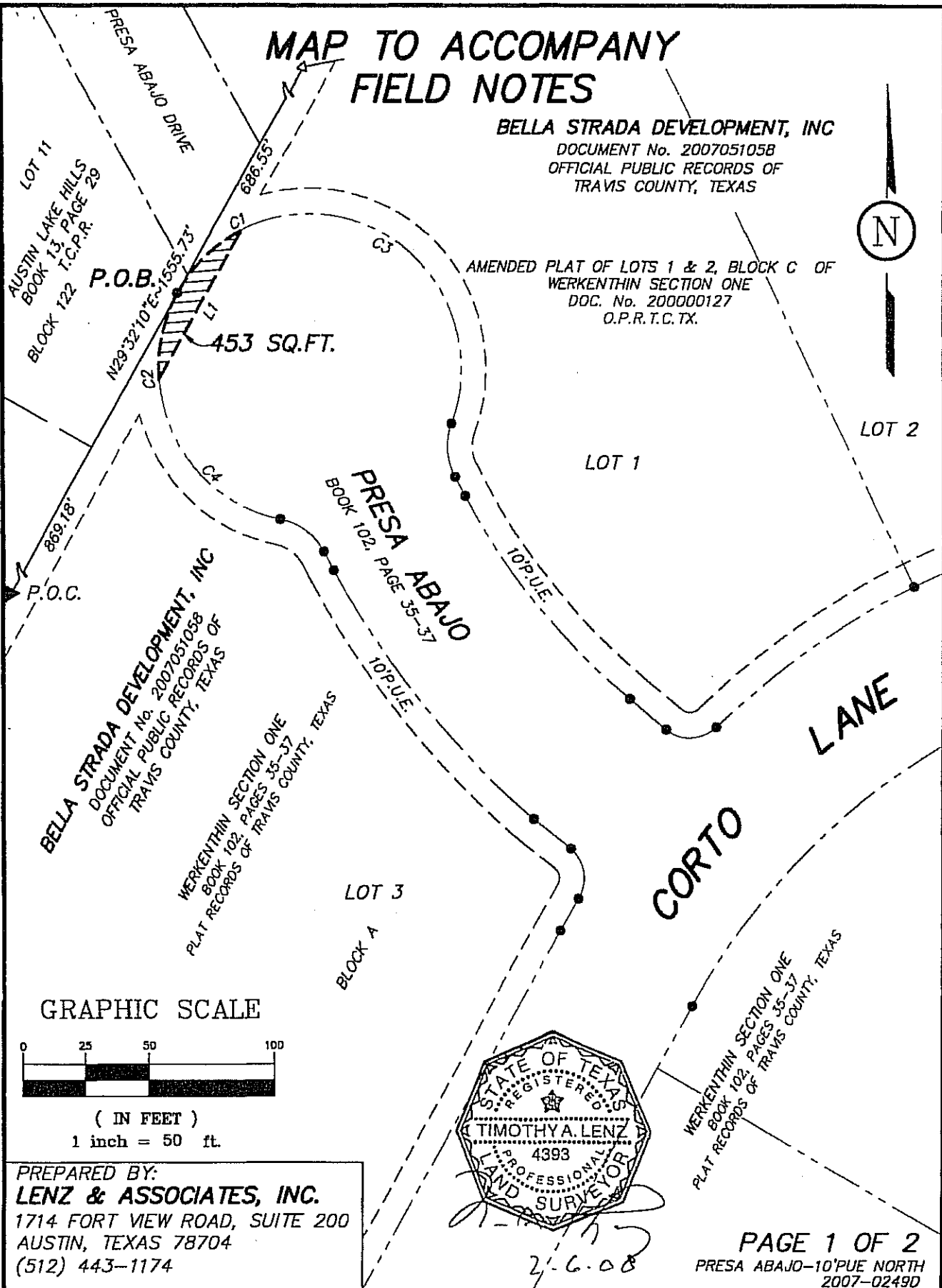
# MAP TO ACCOMPANY FIELD NOTES

**BELLA STRADA DEVELOPMENT, INC**

DOCUMENT No. 2007051058  
OFFICIAL PUBLIC RECORDS OF  
TRAVIS COUNTY, TEXAS



AMENDED PLAT OF LOTS 1 & 2, BLOCK C OF  
WERKENTHIN SECTION ONE  
DOC. No. 200000127  
O.P.R.T.C.TX.



**BELLA STRADA DEVELOPMENT, INC**  
DOCUMENT No. 2007051058  
OFFICIAL PUBLIC RECORDS OF  
TRAVIS COUNTY, TEXAS

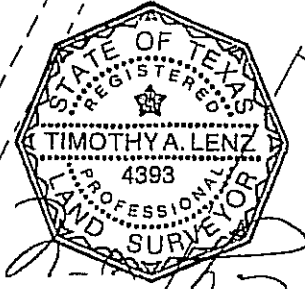
**WERKENTHIN SECTION ONE**  
BOOK 102, PAGES 35-37  
PLAT RECORDS OF TRAVIS COUNTY, TEXAS

**CORTO LANE**

## GRAPHIC SCALE



( IN FEET )  
1 inch = 50 ft.



PREPARED BY:  
**LENZ & ASSOCIATES, INC.**  
1714 FORT VIEW ROAD, SUITE 200  
AUSTIN, TEXAS 78704  
(512) 443-1174

**WERKENTHIN SECTION ONE**  
BOOK 102, PAGES 35-37  
PLAT RECORDS OF TRAVIS COUNTY, TEXAS

PAGE 1 OF 2  
PRESA ABAJO-10'PUE NORTH  
2007-0249D




# MAP TO ACCOMPANY FIELD NOTES

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S29°32'10"W	66.62

CURVE TABLE						
CURVE	DELTA	RADIUS	TANGENT	ARC	CHORD	BEARING
C1	34°00'25"	60.00	18.35	35.61	35.09	N46°05'35"E
C2	33°22'55"	60.00	17.99	34.96	34.47	N12°40'10"E
C3	138°03'29"	60.00	156.54	144.57	112.05	S47°52'28"E
C4	74°34'11"	60.00	45.68	78.09	72.69	S41°18'24"E

## LEGEND

- 1/2" STEEL PIN FOUND  
(UNLESS NOTED)
- SF ● SPINDLE FOUND
- 1/2" STEEL PIN SET W/CAP  
MARKED 'LENZ & ASSOC.'
- ⊙ PIPE FOUND
- ▲ MAG NAIL FOUND AT FENCE CORNER
- △ CALCULATED POINT
- P.U.E. PUBLIC UTILITY EASEMENT
- D.E. DRAINAGE EASEMENT
- (BRG.~DIST.) RECORD CALL
- T.C.P.R. TRAVIS COUNTY PLAT RECORDS
- O.P.R.T.C.TX. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY TEXAS
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
-  AREA TO BE DEDICATED FOR  
PUBLIC UTILITY & DRAINAGE EASEMENT

PREPARED BY:

**LENZ & ASSOCIATES, INC.**

1714 FORT VIEW ROAD, SUITE 200

AUSTIN, TEXAS 78704

(512) 443-1174

PAGE 2 OF 2

PRESA ABAJO-10<sup>th</sup> PUE NORTH  
2007-0249D

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 Apr 24 02:22 PM 2008067112

BARTHOD \$40.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS