

DEVELOPMENT AGREEMENT FOR THE ELLIOTT RANCH SUBDIVISION

This Development Agreement for the Elliott Ranch Subdivision (this "Agreement") is made and entered into by and between the **City of Hays**, Texas, a municipal corporation (herein the "City"), and **Jim C. Elliott and Dalton G. Elliott, Independent Co-Executors of the Estate of Roy C. Elliott, Deceased** (herein the "Developer"). The City and the Developer are sometimes referred to jointly herein as the "parties."

RECITALS:

WHEREAS, the Developer owns 547 acres of land, more or less, as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes, located in the extraterritorial jurisdiction of the City (the "Property"), and the Developer has submitted to the City a preliminary plan for the subdivision and development of the Property to be known as the Elliott Ranch Subdivision (the "Subdivision");

WHEREAS, the Developer has designed the Subdivision to be developed in phases for single family residential homes with conforming uses as a gated-community with private streets and has requested variances from certain of the subdivision regulations of the City required for such development, and by and through this Agreement has agreed to grant to the City certain easements, impose certain restrictive covenants upon the Subdivision and to take other actions as set forth herein to optimize the longevity of Elliott Ranch as a viable subdivision;

WHEREAS, the City has agreed to grant the variances requested by the Developer, approve the preliminary plan for the Subdivision, approve final plats of the phases of the Subdivision in accordance with the preliminary plan, and to take other actions as set forth herein to allow the development of the Subdivision for the benefit of the owners of the lots within the Subdivision and the public;

WHEREAS, the Developer recognizes the need for a water service system to provide an adequate of water to the Subdivision on a dependable basis;

WHEREAS, the City has a recognized public need to protect the scarce supply of water within its limits and the extraterritorial jurisdiction of the City, and the City requires Developer to provide water facilities of sufficient capacity to serve the Subdivision on a dependable basis;

WHEREAS, the Developer has represented to the City that Developer is able to design, construct and install a water system which will serve the Subdivision and that Developer will construct water system improvements of sufficient capacity to meet the needs of the Subdivision on a dependable basis;

NOW, THEREFORE, for and in consideration of the above recitals and the terms, conditions and agreements stated in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article 1. Purposes, Term and Consideration.

1.01 The Developer desires to enter into this Agreement for the development of the Subdivision, and making provisions for the water system, easements, the payment of fees in lieu of parkland dedication, and related matters. It is the intent and purpose of the parties, pursuant to the terms and provisions of this Agreement, to agree on the development of the Subdivision and the following specific issues.

(a) It is necessary for adequate water service to be provided to the Property and that certain improvements be designed and constructed. The construction of "the Project," as defined in Section 3.01 below, will provide the additional facilities to the City's water system that are necessary to serve the Subdivision and the Developer shall pay the cost of the Project and transfer title and ownership to the Project to the City.

(b) It is in the public interest and the best interests of the Developer, for the Developer to plat the area shown as Lot 1, Block B, Phase 2 on the preliminary plan of the Subdivision as a greenbelt and drainage easement for the conservation of the area for the benefit of the lot owners within the Subdivision, and that the Developer pay a fee in lieu of dedicating land to the public for park and recreational purposes.

1.02 The covenants of, benefits to, and performances by, the parties set forth in this Agreement, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the parties.

1.03 The term of this Agreement shall be eight and one-half (8.5) years from the date hereof; provided that Developer shall complete the construction and development of Phase 1 of the Subdivision, in compliance with the approved plans, specifications and final plat of Phase 1, within thirty (30) months from the date of execution of this Agreement; and provided further that Developer shall thereafter complete additional phases or sections of the Subdivision, in compliance with the approved plans, specifications and final plat for such separate phase or section of the Subdivision, as follows: a second phase or section shall be completed within two and one-half (2.5) years after the date of this Agreement; a third phase or section shall be completed within six and one-half (6.5) years after the date of this Agreement; and a fourth and final phase or section, and the Subdivision, shall be completed within eight and one-half (8.5) years after the date of this Agreement. In the event Developer shall fail to complete Phase 1 or any subsequent phase or section of the Subdivision within the required period this Agreement shall expire and terminate; provided the City shall be entitled, at its option, to utilize the performance and payment bonds or other security provided to the City for any such phase or section to complete the part(s) and facilities of the Project required to be constructed in such phase or section and any other improvements therein, or any part thereof, for which such security is posted with the City. In the event Developer shall fail to comply with the foregoing schedule, and in any event upon the expiration of the term of this Agreement, any and all rights of the Developer pursuant to this Agreement expire and terminate. This Agreement will

automatically terminate and expire prior to the expiration of the initial period upon the Developer having completed the development of all of the Property in compliance with the preliminary plan, as referenced in Section 2.01, the final subdivision plats of the Property approved by the city council of the City, and this Agreement. Notwithstanding the termination of this Agreement as provided above in this Section, the City may use any bond or other security posted by Developer to construct and complete any part or facility of the Project and any other improvements for which such security is posted with the City, or any part of such Project or improvements, in any phase or section of the Subdivision for which such security is posted and for which phase or section Developer has started construction or has recorded a final plat of such phase or section. In such event, that part or portion of the Project constructed in such phase or section of the Subdivision shall be and become the property of the City and a part of its water system, free and clear of any and all liens, encumbrances or claims.

Article 2. Development Agreements

2.01 The Developer will develop the Property and Subdivision in substantial compliance with the preliminary plan of the Subdivision as presented to and approved by the governing body of the City on the date the City approves the plat for Phase 1 of the Subdivision. The Developer shall record and file the restrictive covenants attached hereto and incorporated herein for all purposes as Exhibit "B" in the Real Property Records of Hays County, Texas, upon the City approving the plat for Phase 1 of the Subdivision. Upon the approval and recording of final subdivision plat of each subsequent phase or section of the Subdivision, the Developer shall file and record in the Real Property Records of Hays County, Texas, a Supplemental Declaration imposing the restrictive covenants set forth in Exhibit "B" upon each such subsequent phase or section of the Subdivision.

2.02 Upon the City's approval of the plat for Phase 1 of the Subdivision, and the final plat for each subsequent phase or section of the Subdivision, the Developer will grant to the City a public safety easement over all streets, roadways and right-of-way easements platted in such phase or section of the Subdivision, in the form and content attached hereto and incorporated herein for all purposes as Exhibit "C". Upon the City annexing a portion or all of the Subdivision, and from time to time as the City may annex parts of the Subdivision, such public safety easement shall then be and become in full force and effect as to each part, portion or the whole of the Property annexed by the City.

2.03 Upon the City's approval of the plat for Phase 1 of the Subdivision, and the final plat for each subsequent phase or section of the Subdivision, the Developer will grant the City a public utility and public service easement over all streets, roadways and right-of-way easements platted in such phase or section of the Subdivision. Such easement shall be set forth on the plat of each phase or section when approved and recorded in the Plat Records of Hays County, Texas, or a separate easement will be executed and filed in the Real Property Records of Hays County, Texas, for each separate phase or section of the Subdivision. If not set forth on the plat of each section or phase, such public utility and service easement shall be in the form and content attached hereto and incorporated herein for all purposes as Exhibit "D".

2.04 Upon the City's approval of the plat for Phase 1 of the Subdivision, and the final plat for each subsequent phase or section of the Subdivision, the Developer will grant the City a public utility and conservation easement over all greenbelts and conservation areas platted in such phase or section of the Subdivision that are not platted as a building lot. Such easements shall be set forth on the plat of each phase or section when approved and recorded in the Plat Records of Hays County, Texas, or a separate easement will be executed and filed in the Real Property Records of Hays County, Texas, for each separate phase or section of the Subdivision. If not set forth on the plat of each section or phase, such public utility and service easement shall be in the form and content attached hereto and incorporated herein for all purposes as Exhibit "E".

2.05 The Developer will pay the City a fee in the amount of \$100.00 per lot platted in the Subdivision as a fee in lieu of dedicating parkland to the public. Such fee per lot shall be paid for each such lot platted as a building lot by the Developer. The fee will be paid for each such respective lot at the time the Developer receives the City Council approval of the final plat for the phase or section of the Subdivision in which such lot is located.

2.06 Upon the City's approval of the plat for Phase 1 of the Subdivision, the Developer shall record, file and deliver to the City the restrictive covenant attached hereto as Exhibit "F" prohibiting the construction of any permanent habitable structure or any on-site sanitary sewer or septic tank system within that portion of the Property adjacent to the water storage tank as reflected on the preliminary plan. The Developer shall further record, file and deliver to the City such restrictive covenant as to each well Developer is required to drill and install pursuant to this Agreement. The land for the storage tank and each well site shall be conveyed by Developer to City by a special warranty deed, without any liens or encumbrance.

2.07 Upon the City's approval of the plat for Phase 1 of the Subdivision, the Developer shall assign to the City all of the Developer's right, title and interest in and to any ground water rights with respect to the Property in the form attached hereto as Exhibit "G".

2.08 The City confirms and agrees that it has approved the variances requested by the Developer and set forth in Exhibit "H" attached hereto, and has approved the preliminary plan for the Subdivision subject to all matters reflected thereon. The City further confirms and agrees as follows.

(a) Except as provided in Section 1.03 hereof, notwithstanding any provision of its subdivision regulations, the approval of the preliminary plan for the Subdivision shall not expire or terminate during the term of this Agreement and during such term shall continue to be effective until final plats for all of the Property have been approved by the City and recorded in the Plat Records of Hays County, Texas.

(b) Except as provided in Section 1.03 hereof, final plats for each phase or section of the Subdivision may be submitted to the City from time to time as the Developer may determine to be consistent with its development and marketing schedule.

(c) The City confirms and agrees that its has approved such extensions of time for the development of the Property and the submission and approval of final plats for the Property as may be required to effectuate the foregoing. All final plats for portions of the Subdivision shall be in substantial compliance with the preliminary plan approved by the City. Changes or modifications to the approved preliminary plan shall require the approval of the City in accordance with the applicable subdivision regulations of the City. Any resubdivision, replat or amendment or other modification of any recorded plat of any portion of the Subdivision shall be subject to, and require compliance with, the applicable regulations of the City. Any easement granted to the City may not be altered or modified without the prior written consent of the City. No drainage channels, detention ponds or other drainage or water quality improvements shall be modified in a manner that will increase the rate of flow or volume of water on any other person's property without such person's consent unless pursuant to rights granted under an easement for such purposes.

(d) The City will approve modifications to the preliminary plat and the final plats, if any, that are necessary and reasonable as a result of the agreed location of a water well on property designated as a lot, or part thereof, on the preliminary plan.

(e) A \$50,000 bond, or other City approved surety, shall be posted with the City prior to the approval of the final plat for the third phase or section of the Subdivision, to secure the Developer's obligation to upgrade or expand the initial water supply storage and pressurization system in accordance with the requirements for the Project as set forth in Section 3.01 hereof and within the time frame provided in Section 1.03 hereof. Such bond or other surety shall be available for the City to use to upgrade or expand the water supply, storage and pressurization system for any third and fourth phase improvements that are not performed by the Developer in accordance with the provisions of this Agreement.

(f) Developer shall post a performance bond or letter of credit payable to the City, or make a cash deposit with the City, for each phase or section of the Subdivision in an amount equal to one hundred percent (100%) of the estimated construction costs for all parts and portions of the Project required to installed and constructed in such phase or section of the Subdivision, and for all other required improvements for which security is not posted with Hays County. The form of, and the financial standing or rating of, any such issuer of any such security provided to City shall be subject to approval by the City Attorney. Such security shall comply with all other requirements of Section 9 of the City of Hays Subdivison Ordinance, as such section is amended from time to time.

(g) Upon completion and acceptance by the City of the improvements and construction in each phase or section of the Subdivision, Developer shall post a maintenance bond or letter of credit payable to City, or make a cash deposit with the City, in the amount of ten percent (10%) of the cost of the Project as constructed in such phase or section. Such security shall be irrevocable for a term of two (2) years and will secure the performance by Developer of the maintenance of the parts and facilities of the Project in such phase or section.

Article 3. The Project.

3.01 The Project shall consist of the equipment, water wells, lines, storage tanks, pumps and water facilities set forth in Exhibit "I" attached hereto and incorporated herein for all purposes. The terms, conditions and provisions set forth in Exhibit "I" shall be and remain in full force and effect with respect to the Project and the water system as referenced, described and conditioned in Exhibit "I".

Article 4. Project and Subdivision Engineer.

4.01. The Developer has employed K.C. Engineering, Inc. (the "Engineer") to design the Subdivision and the Project. The Engineer will provide professional engineering services and act as the engineer for the Project and the Subdivision. The Engineer will prepare the design, construction plans and specifications, and supporting documentation for all the Project, and all the streets, drainage facilities and other improvements required to be made in the Subdivision (the "improvements"), in conformance with good engineering practices and the applicable design and construction standards of the City in effect on the effective date of this Agreement. The Developer shall be entitled to employ such other engineer from time to time as the Developer may determine to be appropriate, provided the Developer gives written notice to the City of any such change in the Engineer.

Article 5. Plans, Specifications and Performance.

5.01. The City hereby agrees:

(a) to coordinate with the Engineer on specific design requirements and specifications for the Project and other improvements in accordance with the current standards of the City; and to review plans for compliance with City standards not later than 30 days after submission to the City of a complete application, including plans and specifications, approve plans that comply with City standards, and sign the approved plans and specifications for the Project and other improvements in a timely manner as appropriate;

(b) to perform all inspections of the Project and improvements to be performed by the City in a timely manner; and to approve the Project and improvements in a timely manner if constructed in accordance with approved plans and specifications;

(c) after completion and final acceptance of the Project and improvements as constructed, to accept the Project as part of the City's water utility system;

(d) after completion, final acceptance and dedication of the Project, to use the Project and provide water service to the property owners within the Subdivision and to the Developer and to any person or entity to whom the Developer conveys any portion of the Property or assigns its interest in this Agreement for use within the Property, to the extent of the potable water available from the

wells included in the Project and the Project, and not exceeding the volume of water required to serve the density of the Subdivision shown on the preliminary plat;

(e) to approve the Developer's platting the greenbelt and open area shown on the preliminary plan as Lot 1, Block B, Phase 2, to accept the granting to the City of a conservation easement upon such area, to accept the payment to the City of \$100.00 per lot as a fee in lieu of parkland dedication by the Developer, and to waive the parkland dedication requirements established by the City's subdivision ordinance; and

(f) to accept the easements and deeds described in Article 2 to be given and dedicated to the City.

5.02. The Developer hereby agrees:

(a) to contract with the Engineer for the design and preparation of the plans and specifications and the provision of the services anticipated to be performed by the Engineer pursuant to this Agreement;

(b) to review and approve the plans and specifications for the Project and the improvements required to be constructed in the Subdivision;

(c) to enter into a contract or contracts with a contractor, or contractors for construction of the Project and the improvements as contemplated by this Agreement, and to cause the Project and improvements to be constructed as contemplated by this Agreement;

(d) to cause and obtain the design, construction and final acceptance of the phases and sections of the Subdivision, the Subdivision and the completed Project within the time(s) and schedule set forth in Section 1.03;

(e) to plat the Lot 1, Block B, Phase 2 conservation area as a greenbelt and drainage easement as provided on the preliminary plan for the Subdivision, to grant the City a public utility and drainage easement over such land, and to pay the City \$100.00 per platted lot in lieu of the requirement for the dedication of parkland to the public as provided in Article 2 hereof;

(f) to grant and convey the easements and deeds, described in Article 2, to the City;

(g) to contractually require each purchaser of a lot, tract or parcel in the Subdivision to connect each such lot, tract or parcel to the Project and City water system, and to pay the fees, rates and charges established by the City for water service; provided that the owners of the lots within Phase 1 of the Subdivision shall be entitled to install individual private water wells, at their option and expense, until that part or portion of the Project necessary to serve Phase 1 is completed and accepted and the public water system is functioning and available to the boundary of each such lot within Phase 1, and the owners of each lot within Phase 1 shall be required to connect the dwelling

constructed on such lot to the public water system within eighteen (18) months after the same is functioning and available to such lot;

(h) to notify potential purchasers of a lot, tract or parcel in the Subdivision in the vicinity of the ground storage/pump station that the City or other entity may construct an elevated storage tank on the site in the future; and

(i) by contract and restrictive covenant, to require that each purchaser of a lot, tract or parcel in the Subdivision use the solid waste collection services provided, or caused to be provided, by City, and to pay the fees, rates and charges established by the City for solid waste collection and disposal services, as more particularly set forth in Exhibit "B" hereto and in the Solid Waste Disposal Agreement for the Elliott Ranch Subdivision attached as Exhibit "J";

5.03. The parties further mutually agree that the effective date of this Agreement shall be the date the City Council of the City approves this Agreement, the preliminary plan for the Subdivision, and the final plat of Phase 1 of the Subdivision.

Article 6. Cost of the Project.

6.01. The entire "cost of the Project" shall be paid by the Developer and Developer shall transfer and convey the Project to the City free and clear of any liens or encumbrances. The Developer shall not be reimbursed for the cost of the Project, or any part thereof. The Project shall be conveyed to the City in phases. As and when the separate phases of the Subdivision are completed and accepted by the City, the Developer shall convey to the City that part of the Project located in such completed phase of the Subdivision, together with any well, storage tank, line, pump, equipment or easement located outside of such phase of the Subdivision as is necessary to the function of that part of the Project, in the completed phase of the Subdivision, conveyed to the City.

Article 7. Dedication of the Project to the City.

7.01. Upon completion of the Project, inspection and acceptance by City, the Project shall be dedicated to the City and the City shall, in a timely manner, accept the Project for ownership, operation and maintenance. The Developer shall convey to the City all of the facilities, land and equipment comprising the Project, and shall in addition convey to the City by Special Warranty Deed that portion of the Property constituting the water storage facility as reflected on the preliminary plan for the Subdivision. The Developer shall further convey to the City the land for each well site, and any and all warranties held or owned by Developer for and with respect to the construction of the Project, and the equipment, property and fixtures constituting any part of the Project.

Article 8. Assignment of Commitments and Obligations.

8.01. Prior to the completion of the Project and the dedication and acceptance of the Project, the Developer's rights and obligations under this Agreement may be assigned by the Developer without the consent of the City only for the purpose of securing financing or to one or more purchasers purchasing all of the Property for the purpose of completing the development of the Subdivision. After completion of the Project and the dedication and acceptance of the Project, the Developer's rights and obligations under this Agreement may be assigned, in whole or in part, by the Developer to any person or entity without the consent of the City. Except as provided above, the Developer may not assign the Developer's rights and obligations under this Agreement without the prior consent of the City.

8.02. This Agreement shall be binding upon the parties, their successors and assigns. If the City shall hereafter pass any resolution or adopt any ordinance which prohibits the grant of, or restricts the City's authority to grant rights to the Developer, such resolution or ordinance shall not, during the term hereof, change or affect the rights and/or obligations of the City or the Developer under this Agreement.

Article 9. Default.

9.01. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

Article 10. Force Majeure.

10.01. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning; earthquakes; fires; hurricanes, storms and floods; washouts; droughts; adverse weather conditions; restraint of government and people; civil disturbances; explosions; unwarranted delays by the City in approving or signing the plans for the Project, performing inspections, accepting the Project when completed, or otherwise performing its obligations under this Agreement; or other causes not reasonably within the control of the party claiming such inability.

10.02. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome

such inability with all reasonable dispatch.

10.03. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Article 11. Notices.

11.01. Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed delivered when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed to:

City of Hays
Attn: Mayor
P. O. Box 1285
Buda, Texas 78610-1285

with copy to: Barney L. Knight
Barney L. Knight & Associates
223 West Anderson Lane, Suite A105
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed to:

Jim Elliott
4105 Medical Parkway
Austin, Texas 78756

with copy to: R. Alan Haywood
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Article 12. No Contributions or Reimbursements By City.

12.01. Notwithstanding any other term or provision of this Agreement, the City shall have no financial obligations pursuant to this Agreement, and the City shall have no duty to make any contribution to or pay any reimbursement or funds to Developer pursuant hereto.

12.02 Upon the execution of this Agreement, the Developer shall pay and reimburse the City the sum of \$20,000.00 as costs and expenses incurred by the City to date for engineering and legal services with respect to this Agreement and the Subdivision; provided that Developer shall not be required to reimburse more than the actual amount of such fees, costs and expenses billed to City. City shall provide Developer with copies of the invoices to document the amount of such fees, expenses and charges billed to City.

12.03 Developer shall further pay to the City the sum of \$2,500.00 upon the execution of this Agreement. Such payment will be applied by the City to the City's costs and expenses for amending its water CCN to include the Property within the City's Certificate of Convenience and Necessity. Upon the City filing the application to amend the City's CCN, Developer shall promptly file in the records of such application a document or instrument clearly supporting such City application and amendment.

Article 13. Indemnification.

13.01. Developer hereby agrees to indemnify and hold the City and its agents, officers and employees harmless from all costs, claims, expenses, and liabilities (including attorney's fees) whatsoever that may be incurred by the City, its agents, officers or employees, arising from any and all acts done or omitted to be done by Developer, or the employees, agents, subcontractors or assigns of Developer, in connection with the development, improvement, construction or marketing of the Subdivision, or the maintenance of the Subdivision by Developer, or the performance of any service or function by Developer pursuant to this Agreement; provided that this section shall not be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity or any other legal defense available to either Developer or the City.

Article 14. Entire Agreement.

14.01. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between parties hereto, and may not be amended except by a writing signed by all parties and dated subsequent to the date hereof.

Article 15. Effective Date.

15.01. This Agreement shall be effective as of the date specified in paragraph 5.03.

Article 16. Law and Venue.

16.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

Article 17. Time of the Essence.

17.01. It is acknowledged and agreed by the parties that time is of the essence in the performance of this Agreement.

EXECUTED in multiple originals on the dates opposite the signatures below.

The City:

CITY OF HAYS, TEXAS

Date: February 26, 1999

By: *William Couch*
William Couch, Mayor

The Developer:

Date: February 26, 1999

Jim C. Elliott
Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: February 26, 1999

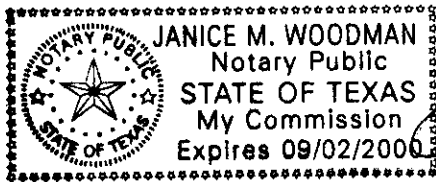
Dalton G. Elliott
Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared William Couch, Mayor of the City of Hays, Texas, 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 and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 26 day of February, 1999.



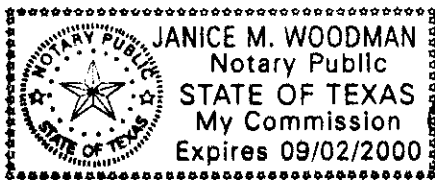
Janice M. Woodman
Notary Public - State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased, 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 and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 26 day of February, 1999.



Janice M. Woodman
Notary Public - State of Texas

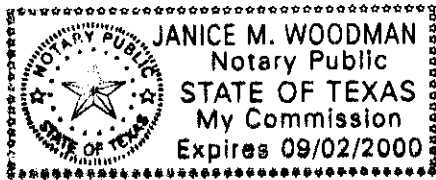
1509 014

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased, 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 and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 26
day of February 1999.



Janice M. Woodman
Notary Public - State of Texas

Exhibit "A"
Property Description

1509 015

A TRACT OF LAND OUT OF THE SINCLAIR D. GERVAIS SURVEY NO. 8, ABSTRACT NO. 7, IN HAYS COUNTY, TEXAS, AND BEING A PORTION OF A REMAINDER OF A 573 ACRE TRACT OF LAND CONVEYED TO ROY C. ELLIOTT BY DEED OF RECORD IN VOLUME 135, PAGE 199 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED, AS THE FOLLOWING TRACTS ONE, TWO AND THREE.

TRACT NO. ONE

BEING 115.17 ACRES OF LAND OUT OF THE SINCLAIR D. GERVAIS SURVEY NO. 8, ABSTRACT NO. 7 IN HAYS COUNTY, TEXAS AND BEING A PORTION OF A REMAINDER OF A 573 ACRE TRACT OF LAND CONVEYED TO ROY C. ELLIOTT BY DEED OF RECORD IN VOLUME 135, PAGE 199 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar with plastic cap set in the east line of said remainder of a 573 acre tract and in the west line of Lot 46, Block C of Hays Country Oaks, a subdivision of record in Volume 1, Page 384 of the Plat Records of Hays County, Texas;

THENCE crossing through the remainder of a 573 acre tract the following twenty four (24) courses:

1. South 57°04'12" West a distance of 408.77 feet to a 1/2" rebar with plastic cap set
2. North 42°31'26" West a distance of 284.00 feet to a 1/2" rebar with plastic cap set;
3. North 61°42'44" West a distance of 284.00 feet to a 1/2" rebar with plastic cap set;
4. North 71°06'01" West a distance of 319.36 feet to a 1/2" rebar with plastic cap set;
5. South 08°21'05" West a distance of 200.00 feet to a 1/2" rebar with plastic cap set;
6. North 81°38'55" West a distance of 322.00 feet to a 1/2" rebar with plastic cap set;
7. North 79°42'16" West a distance of 60.03 feet to a 1/2" rebar with plastic cap set;
8. North 81°38'55" West a distance of 649.00 feet to a 1/2" rebar with plastic cap set;
9. South 08°21'14" West a distance of 11.01 feet to a 1/2" rebar with plastic cap set for a point on

a curve;

10. along a curve to the left, having a radius of 2030.00 feet, a delta angle of $02^{\circ}23'36''$, a length of 84.79 feet, and a chord which bears South $07^{\circ}09'17''$ West a distance of 84.79 feet to a 1/2" rebar with plastic cap set for a point of tangency;

11. North $81^{\circ}38'55''$ West a distance of 248.34 feet to a 1/2" rebar with plastic cap set;

12. North $01^{\circ}23'28''$ East a distance of 92.06 feet to a 1/2" rebar with plastic cap set;

13. North $00^{\circ}22'34''$ East a distance of 159.86 feet to a 1/2" rebar with plastic cap set;

14. North $09^{\circ}47'40''$ West a distance of 158.17 feet to a 1/2" rebar with plastic cap set;

15. North $17^{\circ}24'15''$ West a distance of 82.86 feet to a 1/2" rebar with plastic cap set;

16. North $36^{\circ}41'31''$ West a distance of 159.75 feet to a 1/2" rebar with plastic cap set;

17. South $81^{\circ}38'55''$ East a distance of 478.22 feet to a 1/2" rebar with plastic cap set;

18. North $08^{\circ}21'05''$ East a distance of 25.00 feet to a 1/2" rebar with plastic cap set;

19. North $81^{\circ}38'55''$ West a distance of 507.66 feet to a 1/2" rebar with plastic cap set;

20. North $41^{\circ}18'40''$ West a distance of 289.67 feet to a 1/2" rebar with plastic cap set;

21. North $28^{\circ}11'42''$ West a distance of 248.95 feet to a 1/2" rebar with plastic cap set;

22. North $34^{\circ}39'21''$ East a distance of 319.05 feet to a 1/2" rebar with plastic cap set;

23. North $42^{\circ}27'55''$ East a distance of 336.06 feet to a 1/2" rebar with plastic cap set;

24. North $22^{\circ}25'14''$ East a distance of 313.95 feet to a 1/2" rebar with plastic cap set in the north line of the remainder of a 573 acre tract and the south line of a 400.46 acre tract of land conveyed to John H. Rodgers by Deed of record in Volume 880, Page 820 of the Deed Records of Hays County, Texas;

THENCE along the north line of the remainder of a 573 acre tract and the south line of said 400.46 acre tract the following two (2) courses:

1. North $88^{\circ}14'11''$ East a distance of 2277.59 feet (record: North $89^{\circ}26'10''$ East, 2277.61 feet) to a 60d nail found in a wooden fence post;

2. South 66°12'38" East a distance of 61.35 feet (record: South 65°05'00" East, 61.30 feet) to a 1/2" iron pipe found for the northeast corner of the remainder of a 573 acre tract and the northwest corner of Lot 41, Block "C" of Hays Country Oaks Subdivision;

THENCE along the east line of the remainder of a 573 acre tract and the west line of Hays Country Oaks Subdivision the following four (4) courses:

1. South 00°09'25" West a distance of 489.97 feet (record: South 02°25'16" West, 489.97 feet) to a 1/2" pipe found;
2. South 00°11'52" West a distance of 1197.14 feet (record: South 02°37'02" West, 1197.14 feet) to a 1/2" rebar with plastic cap set;
3. South 30°51'34" East a distance of 13.92 feet (record: South 28°26'24" East, 13.92 feet) to a 1/2" rebar with plastic cap set;
4. South 01°36'42" East a distance of 347.99 feet to the POINT OF BEGINNING;

This parcel contains 115.17 acres of land, more or less, out of the Sinclair D. Gervais Survey No. 8, Abstract No. 7 in Hays County, Texas. Description prepared from an on-the-ground survey made during October 1998. Bearings are based on State Plane Coordinates, Texas South Central Zone.

TRACT NO. TWO.

BEING 301.79 ACRES OF LAND OUT OF THE SINCLAIR D. GERVAIS SURVEY NO. 8, ABSTRACT NO. 7 IN HAYS COUNTY, TEXAS AND BEING A PORTION OF A REMAINDER OF A 573 ACRE TRACT OF LAND CONVEYED TO ROY C. ELLIOTT BY DEED OF RECORD IN VOLUME 135, PAGE 199 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar found in the north right-of-way line of Oak Grove Road (R.O.W. varies) and in the east line of said remainder of a 573 acre tract and in the west line of a 148 ¼ acre tract of land conveyed to Jack Dahlstrom by Deed of record in Volume 185, Page 118 of the Deed Records of Hays County, Texas;

THENCE with the south line of the remainder of a 573 acre tract and the north right-of-way line of said Oak Grove Road the following nine (9) courses:

1. South 88°27'27" West a distance of 400.98 feet to a cotton spindle found;
2. South 88°32'53" West a distance of 284.63 feet to a fence post found for corner;

3. South 88°02'26" West a distance of 116.31 feet to a 1/2" rebar found;
4. South 88°07'11" West a distance of 400.94 feet to a 1/2" rebar found;
5. South 88°07'56" West a distance of 401.08 feet to a 1/2" rebar found;
6. South 88°14'54" West a distance of 401.02 feet to a 1/2" rebar found;
7. South 88°19'41" West a distance of 1078.27 feet to a fence post found for corner;
8. South 88°46'26" West a distance of 124.88 feet to a drill hole found in rock for corner;
9. South 88°49'02" West, passing at a distance of 401.07 feet a 1/2" rebar found and continuing for a total distance of 642.90 feet to a 1/2" rebar with plastic cap set, from which a 1/2" rebar with plastic cap set in the west line of the remainder of a 573 acre tract for the southeast corner of Lot 1, Block A of Hays Country Oaks Section 2, a subdivision of record in Volume 2, Page 60 of the Plat Records of Hays County, Texas bears South 88°50'32" West a distance of 527.60 feet;

THENCE crossing through the remainder of a 573 acre tract the following twenty nine (29) courses:

1. North 22°40'33" West a distance of 588.34 feet to a 1/2" rebar with plastic cap set;
2. North 88°23'08" East a distance of 1427.97 feet to a 1/2" rebar with plastic cap set;
3. North 01°36'52" West a distance of 322.00 feet to a cotton spindle set;
4. North 26°39'27" West a distance of 66.23 feet to a 1/2" rebar with plastic cap set;
5. North 01°36'52" West a distance of 435.00 feet to a 1/2" rebar with plastic cap set;
6. South 88°23'08" West a distance of 458.38 feet to a 1/2" rebar with plastic cap set;
7. North 00°46'25" West a distance of 260.37 feet to a 1/2" rebar with plastic cap set;
8. North 89°13'35" East a distance of 265.84 feet to a 1/2" rebar with plastic cap set;
9. North 29°53'42" East a distance of 295.88 feet to a 1/2" rebar with plastic cap set;
10. North 13°13'07" East a distance of 206.12 feet to a 1/2" rebar with plastic cap set;
11. North 15°34'36" East a distance of 208.43 feet to a 1/2" rebar with plastic cap set;
12. North 03°28'29" East a distance of 200.55 feet to a 1/2" rebar with plastic cap set;

1509 019

13. North 12°33'14" West a distance of 408.61 feet to a 1/2" rebar with plastic cap set;
14. North 02°37'34" West a distance of 337.57 feet to a 1/2" rebar with plastic cap set;
15. South 69°27'34" West a distance of 502.54 feet to a 1/2" rebar with plastic cap set;
16. North 20°12'05" West a distance of 25.00 feet to a 1/2" rebar with plastic cap set;
17. North 69°27'34" East a distance of 513.70 feet to a 1/2" rebar with plastic cap set;
18. North 12°35'27" West a distance of 56.10 feet to a 1/2" rebar with plastic cap set;
19. North 13°20'57" East a distance of 325.94 feet to a 1/2" rebar with plastic cap set;
20. North 08°06'35" East a distance of 285.88 feet to a 1/2" rebar with plastic cap set;
21. North 22°21'35" West a distance of 219.52 feet to a 1/2" rebar with plastic cap set;
22. North 41°51'01" West a distance of 497.48 feet to a 1/2" rebar with plastic cap set;
23. South 56°55'20" West a distance of 238.49 feet to a 1/2" rebar with plastic cap set;
24. South 41°59'46" West a distance of 265.24 feet to a 1/2" rebar with plastic cap set;
25. South 13°50'46" West a distance of 199.16 feet to a 1/2" rebar with plastic cap set;
26. South 38°20'03" West a distance of 200.12 feet to a 1/2" rebar with plastic cap set;
27. South 38°09'44" West a distance of 400.29 feet to a 1/2" rebar with plastic cap set;
28. South 45°15'00" West a distance of 708.86 feet to a 1/2" rebar with plastic cap set;
29. South 89°15'54" West a distance of 62.63 feet to a 1/2" rebar with plastic cap set in the west line of the remainder of a 573 acre tract and in the east line of Lot 13, Block A of said Hays Country Oaks Section 2;

THENCE along the west line of the remainder of a 573 acre tract and the east line of Hays Country Oaks Section 2 the following two (2) courses:

1. North 00°44'00" West a distance of 1119.61 feet to a 1/2" rebar found;

1509 020

2. North $00^{\circ}42'18''$ West a distance of 1345.00 feet to a 1/2" rebar found for the northwest corner of the remainder of a 573 acre tract and the northeast corner of Lot 1, Block A of Hays Country Oaks Section 2, and being in the south line of a 84.64 acre tract conveyed to MAC Acquisitions, Inc. by General Warranty Deed, of record in Volume 1005, Page 455 of the Official Public Records of Hays County, Texas;

THENCE along the north line of the remainder of a 573 acre tract and the south line of said 84.64 acre tract the following eight (8) courses:

1. North $89^{\circ}06'13''$ East a distance of 49.61 feet to a 1/2" rebar with plastic cap set;
2. North $89^{\circ}00'11''$ East a distance of 172.46 feet to a Hilti nail set in the base of a tree;
3. North $87^{\circ}52'28''$ East a distance of 68.93 feet to a 1/2" rebar with plastic cap set;
4. North $81^{\circ}58'54''$ East a distance of 64.85 feet to a 1/2" rebar with plastic cap set;
5. North $87^{\circ}15'12''$ East a distance of 62.42 feet to a cotton spindle set;
6. South $79^{\circ}14'44''$ East a distance of 96.26 feet to a cotton spindle set;
7. South $86^{\circ}06'43''$ East a distance of 51.68 feet to a 1/2" rebar with plastic cap set;
8. North $86^{\circ}15'03''$ East a distance of 282.91 feet to a 1/2" rebar found in the east line of the 84.64 acre tract and in the west line of a 400.46 acre tract conveyed to John H, Rodgers by Warranty Deed with Vendor's Lien, of record in Volume 880, Page 820 of the Official Public Records of Hays County, Texas;

THENCE along the north line of the remainder of a 573 acre tract and the west and south lines of said 400.46 acre tract the following five (5) courses:

1. South $02^{\circ}07'42''$ East a distance of 52.22 feet to a 1/2" rebar found;
2. North $88^{\circ}46'59''$ East a distance of 478.03 feet to a 1/2" rebar with plastic cap set;
3. South $86^{\circ}32'44''$ East a distance of 381.40 feet to a 1/2" rebar with plastic cap set;
4. North $81^{\circ}23'28''$ East a distance of 122.02 feet to a cotton spindle set;
5. North $69^{\circ}26'00''$ East a distance of 219.38 feet to a 1/2" rebar with plastic cap set;

1509 021

THENCE crossing through the remainder of a 573 acre tract the following twenty four (24) courses:

1. South 22°25'14" West a distance of 313.95 feet to a 1/2" rebar with plastic cap set;
2. South 42°27'55" West a distance of 336.06 feet to a 1/2" rebar with plastic cap set;
3. South 34°39'21" West a distance of 319.05 feet to a 1/2" rebar with plastic cap set;
4. South 28°11'42" East a distance of 248.95 feet to a 1/2" rebar with plastic cap set;
5. South 41°18'40" East a distance of 289.67 feet to a 1/2" rebar with plastic cap set;
6. South 81°38'55" East a distance of 507.66 feet to a 1/2" rebar with plastic cap set;
7. South 08°21'05" West a distance of 25.00 feet to a 1/2" rebar with plastic cap set;
8. North 81°38'55" West a distance of 478.22 feet to a 1/2" rebar with plastic cap set;
9. South 36°41'31" East a distance of 159.75 feet to a 1/2" rebar with plastic cap set;
10. South 17°24'15" East a distance of 82.86 feet to a 1/2" rebar with plastic cap set;
11. South 09°47'40" East a distance of 158.17 feet to a 1/2" rebar with plastic cap set;
12. South 00°22'34" West a distance of 159.86 feet to a 1/2" rebar with plastic cap set;
13. South 01°23'28" West a distance of 92.06 feet to a 1/2" rebar with plastic cap set;
14. South 81°38'55" East a distance of 248.34 feet to a 1/2" rebar with plastic cap set for a point in a curve;
15. along a curve to the right, having a radius of 2030.00 feet, a delta angle of 02°23'36", a length of 84.79 feet, and a chord which bears North 07°09'17" East a distance of 84.79 feet to a 1/2" rebar with plastic cap set for a point of tangency;
16. North 08°21'05" East a distance of 11.01 feet to a 1/2" rebar with plastic cap set;
17. South 81°38'55" East a distance of 649.00 feet to a 1/2" rebar with plastic cap set;
18. South 79°42'16" East a distance of 60.03 feet to a 1/2" rebar with plastic cap set;
19. South 81°38'55" East a distance of 322.02 feet to a 1/2" rebar with plastic cap set;

20. North 08°21'05" East a distance of 200.00 feet to a 1/2" rebar with plastic cap set;
21. South 71°06'01" East a distance of 319.36 feet to a 1/2" rebar with plastic cap set;
22. South 61°42'44" East a distance of 284.00 feet to a 1/2" rebar with plastic cap set;
23. South 42°31'26" East a distance of 284.00 feet to a 1/2" rebar with plastic cap set;
24. North 57°04'12" East a distance of 408.77 feet to a 1/2" rebar with plastic cap set in the east line of the remainder of a 573 acre tract and in the west line of Lot 46 of Hays Country Oaks, a subdivision of record in Volume 1, Page 384 of the Plat Records of Hays County, Texas;

THENCE along the east line of the remainder of a 573 acre tract and the west line of said Hays Country Oaks Subdivision the following two (2) courses:

1. South 01°36'42" East, passing at a distance of 792.25 feet a 1/2" pipe found for the southwest corner of Lot 48, Block C of said Hays Country Oaks and continuing for a total distance of 819.59 feet to a 1/2" pipe found;
2. South 01°15'24" East, passing at a distance of 1191.15 feet a 1/2" pipe found for the southwest corner of Lot 52, Block C of said Hays Country Oaks and continuing for a total distance of 1230.35 feet to a 1/2" rebar with plastic cap set in the north line of the 148 ¼ acre tract;

THENCE along the east line of the remainder of a 573 acre tract and the north and west lines of the 148 ¼ acre tract the following two (2) courses:

1. South 83°30'06" West a distance of 17.01 feet to a nail found;
2. South 01°19'00" East a distance of 1357.65 feet to the POINT OF BEGINNING.

This parcel contains 301.79 acres of land, more or less, out of the Sinclair D. Gervais Survey No. 8, Abstract No. 7 in Hays County, Texas. Description prepared from an on-the-ground survey made during October 1998. Bearings are based on State Plane Coordinates, Texas South Central Zone.

TRACT NO. THREE

BEING 130.23 ACRES OF LAND OUT OF THE SINCLAIR D. GERVAIS SURVEY NO. 8, ABSTRACT NO. 7 IN HAYS COUNTY, TEXAS AND BEING A PORTION OF A REMAINDER OF A 573 ACRE TRACT OF LAND CONVEYED TO ROY C. ELLIOTT BY DEED OF RECORD IN VOLUME 135, PAGE 199 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a drillhole found in a rock, being in the south line of said remainder of a 573 acre tract and lying in the north right-of-way line of Oak Grove Road (R.O.W. varies);

THENCE South $88^{\circ}49'02''$ West, along the south line of the remainder of a 573 acre tract and the north right-of-way line of Oak Grove Road a distance of 642.90 feet to a 1/2" rebar with plastic cap set for the POINT OF BEGINNING;

THENCE South $88^{\circ}50'32''$ West, continuing along the south line of the remainder of a 573 acre tract and the north right-of-way line of Oak Grove Road a distance of 527.60 feet to a 1/2" rebar with plastic cap set for the southwest corner of the remainder of a 573 acre tract and the southeast corner of Lot 1, Block "A" of Hays Country Oaks Section 2, a subdivision of record in Book 2, Page 60 of the Plat Records of Hays County, Texas

THENCE along the west line of the remainder of a 573 acre tract and the east line of said Hays Country Oaks Section 2 the following two (2) courses:

1. North $00^{\circ}31'58''$ West a distance of 1566.61 feet (record: North $00^{\circ}42'59''$ East, 1566.59 feet) to a 1/2" rebar found;
2. North $00^{\circ}44'00''$ West a distance of 1452.05 feet to a 1/2" rebar with plastic cap set;

THENCE crossing through the remainder of a 573 acre tract the following twenty nine (29) courses:

1. North $89^{\circ}15'52''$ East a distance of 62.63 feet to a 1/2" rebar with plastic cap set;
2. North $45^{\circ}15'00''$ East a distance of 708.86 feet to a 1/2" rebar with plastic cap set;
3. North $38^{\circ}09'44''$ East a distance of 400.29 feet to a 1/2" rebar with plastic cap set;
4. North $38^{\circ}20'03''$ East a distance of 200.12 feet to a 1/2" rebar with plastic cap set;
5. North $13^{\circ}50'46''$ East a distance of 199.16 feet to a 1/2" rebar with plastic cap set;
6. North $41^{\circ}59'46''$ East a distance of 265.24 feet to a 1/2" rebar with plastic cap set;

1509 024

7. North 56°55'20" East a distance of 238.49 feet to a 1/2" rebar with plastic cap set;
8. South 41°51'01" East a distance of 497.48 feet to a 1/2" rebar with plastic cap set;
9. South 22°21'35" East a distance of 219.52 feet to a 1/2" rebar with plastic cap set;
10. South 08°06'35" West a distance of 285.88 feet to a 1/2" rebar with plastic cap set;
11. South 13°20'57" West a distance of 325.94 feet to a 1/2" rebar with plastic cap set;
12. South 12°35'27" East a distance of 56.10 feet to a 1/2" rebar with plastic cap set;
13. South 69°27'34" West a distance of 513.70 feet to a 1/2" rebar with plastic cap set;
14. South 20°12'05" East a distance of 25.00 feet to a 1/2" rebar with plastic cap set;
15. North 69°27'34" East a distance of 502.54 feet to a 1/2" rebar with plastic cap set;
16. South 02°37'34" East a distance of 337.57 feet to a 1/2" rebar with plastic cap set;
17. South 12°33'14" East a distance of 408.61 feet to a 1/2" rebar with plastic cap set;
18. South 03°28'29" West a distance of 200.55 feet to a 1/2" rebar with plastic cap set;
19. South 15°34'36" West a distance of 208.43 feet to a 1/2" rebar with plastic cap set;
20. South 13°13'07" West a distance of 206.12 feet to a 1/2" rebar with plastic cap set;
21. South 29°53'42" West a distance of 295.88 feet to a 1/2" rebar with plastic cap set;
22. South 89°13'35" West a distance of 265.84 feet to a 1/2" rebar with plastic cap set;
23. South 00°46'25" East a distance of 260.37 feet to a 1/2" rebar with plastic cap set;
24. North 88°23'08" East a distance of 458.38 feet to a 1/2" rebar with plastic cap set;
25. South 01°36'52" East a distance of 435.00 feet to a 1/2" rebar with plastic cap set;
26. South 26°39'27" East a distance of 66.23 feet to a 1/2" rebar with plastic cap set;
27. South 01°36'52" East a distance of 322.00 feet to a 1/2" rebar with plastic cap set;

1509 025

28. South $88^{\circ}23'08''$ West a distance of 1427.97 feet to a 1/2" rebar with plastic cap set;
29. South $22^{\circ}40'33''$ East a distance of 588.34 feet to the POINT OF BEGINNING.

This parcel contains 130.23 acres of land, more or less, out of the Sinclair D. Gervais Survey No. 8, Abstract No. 7 in Hays County, Texas. Description prepared from an on-the-ground survey made during October 1998. Bearings are based on State Plane Coordinates, Texas South Central Zone.

Exhibit "B"
AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR ELLIOTT RANCH

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR ELLIOTT RANCH (this "**Declaration**") is made the date set forth below, by Jim C. Elliott and Dalton G. Elliott, Co-Independent Executors of the ESTATE OF ROY C. ELLIOTT, DECEASED ("**Declarant**").

RECITALS:

A. By Declaration of Covenants and Restrictions for Elliott Ranch recorded in Volume 1241, Page 69 of the Official Records of Hays County, Texas (the "**Prior Declaration**"), Declarant imposed certain covenants, restrictions, charges and liens upon all of the lots in Elliott Ranch, Phase One, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 7, Pages 195 & 196 of the Plat Records of Hays County, Texas, as part of the creation of a subdivision known as "Elliott Ranch" with roads, storm water controls and certain other common facilities for the benefit of the said subdivision.

B. Declarant has determined that the Elliott Ranch subdivision shall be developed as a single-family residential community with private streets, and towards that end, the above-described subdivision plat of Elliott Ranch, Phase One has been vacated by instrument recorded in Volume _____, Page ___ of the Official Records of Hays County, Texas, and the real property covered by said prior plat has been resubdivided as ELLIOTT RANCH, PHASE ONE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book ___, Pages _____ of the Plat Records of Hays County, Texas ("**Phase One**").

C. As the owner of all of the Lots within Phase One and in accordance with Article 14 of the Prior Declaration, Declarant desires to amend and restate the terms of the Prior Declaration in its entirety as hereinafter set forth in order to (i) provide for the preservation of the values and amenities in said subdivision and for the maintenance of said private streets, storm water controls and common facilities, (ii) subject the real property described in Article 2 to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof and for the efficient preservation of the values, attractiveness and desirability of the lots in said Elliott Ranch subdivision, and (iii) create a homeowners association for the purpose of maintaining the private streets and certain other common facilities, administering and enforcing certain covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant declares that the Prior Declaration is hereby amended and restated in its entirety and that this Declaration shall in all respects replace and supersede the Prior Declaration for all purposes, and that the real property described in Article 2, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and easements (sometimes referred to as "covenants and restrictions") hereby imposed on said property, and such restrictions and covenants shall constitute covenants running with the land and shall be binding upon all parties having any right, title or interest in any portion of said property, their heirs, successors and assigns, and shall inure to the benefit of each owner of any such property, to wit:

ARTICLE 1
DEFINITIONS

(a) The "**Committee**" shall mean the Architectural Control Committee created pursuant to this Declaration to review and approve the Plans and Specifications for the construction of Improvements upon the Property.

(b) The "**Association**" shall mean the Elliott Ranch Homeowners Association, Inc., a Texas nonprofit corporation.

(c) An "**Assessment**" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

(d) The "**Board**" shall mean the Board of Directors of the Association.

(e) The "**Common Area**" shall mean either fee simple or an easement interest in any and all real property and all improvements located thereon, including the Private Streets within the Property, any limited access gates and controls, and landscaping and other improvements located within the right-of-way of the Private Streets and the entryways, the Greenbelt and structural or nonstructural drainage facilities and water quality controls, from time to time (1) conveyed and/or granted to the Association by Declarant, and (2) expressly designated by Declarant to be "Common Area" for the benefit of the Owners and/or the Association and the Members thereof.

(f) "**Declarant**" shall mean Jim C. Elliott and Dalton G. Elliott, Co-Independent Executors of the ESTATE OF ROY C. ELLIOTT, DECEASED, or their 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.

(g) The "**Greenbelt**" shall mean and refer to Lot 1, Block B of Phase 2 as reflected on the approved Preliminary Plan for the Elliott Ranch subdivision attached hereto as Exhibit A, and

which lot when finally platted shall be designated by Declarant to be Common Area for the exclusive use and benefit of the Owners and the Association as a private greenbelt, drainage easement and conservation easement.

(h) **"Improvement"** shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, barns, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, windmills, and any facilities used in connection with water, sanitary sewer, wastewater, septic tank, storm sewer, drainage, gas, electric, telephone, regular or cable television, or other utilities.

(i) **"Lot"** shall mean and refer to any of the numbered lots shown upon any recorded subdivision map of the Property (including Lots in any permitted resubdivision and Lots in any Additional Land added to this Declaration as provided herein), other than the Private Streets, the Greenbelt or other Common Area.

(j) **"Member"** shall mean each and every person or legal entity who shall hold membership rights in the Association.

(k) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but excluding those having such interest merely as security for the performance of an obligation. Where matters within this Declaration require a vote of the Owners, each Owner (including Declarant) of a Lot shall be entitled to one (1) vote for each Lot so owned. Where a Lot is held jointly or in common by more than one (1) Owner, such Owners thereof designate one (1) Owner among them who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest except by proxy signed by such Owners.

(l) **"Plans and Specifications"** shall mean the documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, 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 all other documentation or information relevant to such Improvement.

(m) The **"Property"** shall mean and refer to the real property described in Article 2 hereof, and any Additional Land that may be brought under the scheme of this Declaration as provided in Article 2 hereof, and which is subject to this Declaration or any Supplemental Declaration.

(n) **"Private Street"** shall mean any lot, parcel or tract within the Property designated as a "private street" on any recorded subdivision plat or map of the Property, or any portion thereof,

or otherwise designated by Declarant to be used as a private right-of-way or as an access easement to provide ingress and egress to and from the Lots and any public highway, street or road. As used herein, the term "Private Street" shall not include any private driveway, roadway, trail or other accessway located on any Lot.

(o) **"Supplemental Declaration"** shall mean any declaration of covenants, conditions, and restrictions which may be hereafter recorded by Declarant to (1) add any Additional Land to the Property, or (2) subject any portion of the Property to further covenants, conditions, or restrictions, or (3) to withdraw any real property from the Property.

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

(a) The Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Hays County, Texas, and is more particularly described as follows:

All lots in ELLIOTT RANCH, PHASE ONE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book ____, Pages _____ of the Plat Records of Hays County, Texas; and

(b) Phased Subdivision; Addition of Land. It is contemplated that Declarant may develop certain real property (now owned by Declarant) in the vicinity of the Property for residential purposes and may include such real property within the definition of the Property. Declarant, its successors and assigns, shall have the right (but not the obligation) at any time and from time to time, without the consent or approval of any other Owner of any Lot, to bring within the scheme of this Declaration additional land (the "**Additional Land**") so long as such land is within the land described on Exhibit A attached hereto and provided such Additional Land has been subdivided and platted in accordance with the applicable subdivision regulations of the City of Hays and Hays County, Texas.

As each phase of such land is platted, dedicated and/or developed, Declarant may (but shall not be required to) record one or more Supplemental Declarations and designate such uses, classifications, and covenants, conditions and restrictions as Declarant may deem appropriate for such Additional Land. Any Supplemental Declaration may, but need not, provide that certain provisions of this Declaration are not applicable to the Additional Land covered by such Supplemental Declaration, or may amend or modify the provisions of this Declaration as to any Additional 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 (2/3rds) 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.

(c) Withdrawal of Land. Declarant shall have the right at any time prior to the Transfer Date, as defined in Article 11(c), to reduce or withdraw lands then owned by Declarant from the Property, subject to the approval of a replat, or an amended plat, of the Property in accordance with the applicable regulations of the City of Hays and Hays County, Texas. Upon any such withdrawal this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required replat, or amend the plat(s) of the Property in accordance with the applicable regulations of the City of Hays and Hays County, Texas; record such replat or amended plat in the Plat Records of Hays County, Texas; and to record in the Official Property Records of Hays County, Texas, a notice of withdrawal of such land from this Declaration. A copy of such notice of such withdrawal shall be given to the City of Hays. Notwithstanding the foregoing, All Common Area, including the Private Streets and the Greenbelt, shall be transferred and conveyed to the Association, and Declarant may not withdraw any Common Area, including the Private Streets and the Greenbelt, without the approval of the Association, or prior to the incorporation of the Association, without the approval of the City of Hays, and without approval of a replat, or an amended plat, of the Property in accordance with the applicable regulations of the City of Hays and Hays County, Texas.

ARTICLE 3
LAND USE

(a) Lots. Each Lot (other than the Private Streets, the Greenbelt or any other Common Area) shall be used only for single family residential purposes, including related or ancillary uses approved by Declarant, and for no other purpose. No portion of a Lot, nor any building, structure or other Improvement located thereon, except for the entire Lot, together with all Improvements located thereon, may be rented, and such entire Lot may be rented only for single family residential purposes. Garage and other apartments, duplexes, condominiums, townhouses, and other multifamily residential, office, commercial, retail, and industrial buildings and uses are prohibited. Notwithstanding the foregoing, living quarters that are located in an accessory building or structure, that are occupied by members of the family or employees of the Owner or occupant of the Lot, and that are not rented or otherwise used as a separate domicile, shall be permitted.

(b) Common Area. No land within any Common Area shall be improved, used or occupied except in such manner as shall have been approved by the Committee, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and improvement; provided, the use of the Greenbelt shall be limited to use as a private greenbelt, drainage easement and conservation area for the exclusive benefit of the Owners and the Association, and as a public utility easement. No improvements shall be constructed or placed within the Greenbelt, other than drainage, detention and/or water quality facilities and related improvements, such passive recreational facilities, such as trails, paths or accessways and related improvements, and landscaping that do not change the direction or flow of drainage channels within the Greenbelt or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels, and public utility lines.

(c) Signs and Sales Programs. No signs of any kind shall be displayed for public view on any Lot excepting that one professional sign of not more than three square foot in size, one sign of not more than thirty-two (32) square feet advertising the property for sale or rent, or signs of modes dimensions used by a builder to advertise the property during the construction and sale period may be permitted. A separate and permanent sign identifying the Elliott Ranch Subdivision may also be erected at each of the entrances to the Property. All signs constructed after the adoption by the City of Hays of sign regulations that apply to the Property shall comply with the applicable provisions of such regulations.

(d) Oil, Gas, Mineral, Mining and Excavation Operations. No oil, gas, mineral, mining or excavation operations of any kind or character, no drilling of prospecting for oil, gas or other minerals, no oil, gas or other mineral development operations, refining, quarrying, or mining operations shall at any time be permitted upon any Lot or other area within the Property.

(e) Hunting and Firearms. Hunting, trapping, the use or discharge of firearms, and the use or discharge of firecrackers and fireworks on and within the Property is prohibited.

(f) Livestock, Animals, Household Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small and domesticated household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Except as provided in the immediately preceding sentence, no animals, including pigs, hogs, swine, poultry, fowl, wild or dangerous animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property; provided, a limited number of animals may be permitted for limited periods of time if such animals are kept for purposes of students participating in educational, "4H," "FFA," or similar programs. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with the Plans and Specifications approved by the Committee, which shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any Private Street.

(g) Trucks, Buses and Trailers. No truck, bus, motor home, recreational vehicle, boat or trailer shall be parked in the Private Street in front of any Lot except for construction and repair equipment while a residence is being built or repaired thereon, and no truck, bus, motor home, recreational vehicle, boat, or trailer shall be parked on the driveway or any portion of the Lot as to be visible from the Private Street in front of any Lot.

(h) Storage and Vehicle Repairs. No unsightly storage shall be permitted that is visible

from the Private Street in front of any Lot. No boat, trucks or other vehicles shall be stored or kept for the purpose of repair on any Lot, except in enclosed garages or storage facilities protected from the view of the other residents.

(i) Nuisances. No noxious or offensive activities of any kind shall be permitted upon any Lot, nor shall anything be done thereon which constitutes a nuisance or which may be or may become an annoyance to the neighborhood.

(j) Temporary Structures. No structure or emplacement of a temporary character, mobile home, trailer, derelict, junk or racing motor vehicle, or any motor vehicle without a current license tag, or any tent, shack, or other outbuildings (except a barn as approved by the Committee) which exceeds eight (8) feet in height or is in excess of eight (8) feet in width and ten (10) feet in length, shall be erected, placed, driven onto, altered, or permitted to remain on any Lot at any time, either temporarily or permanently, without the prior written consent of the Committee. No mobile home or preconstructed building of any kind may be moved upon any Lot for any purpose, save and except that Declarant, or its successors or assigns, or duly authorized agents may utilize temporary structures for a sales office or construction office which may be moved onto a Lot.

(k) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and the same shall not be kept, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and shall be screened so as not to be visible from any other portion of the Property. The Committee shall have the right to require each Owner to subscribe to a specific location for trash service and for the placement of garbage containers for collection purposes.

(l) Maintenance of Lots. The Owner of each Lot shall keep grass, weeds and vegetation trimmed or cut so that the same shall remain in a neat and attractive condition. No fence, wall or shrub or other structure or planting which obstructs sight lines shall be permitted without the specific approval of the Committee. The digging or removal of dirt or other surface material from any Lot, except as necessary in connection with landscaping or construction of improvements, is prohibited.

(m) Chemical Fertilizers, Pesticides and Herbicides. No chemical fertilizers, pesticides or herbicides other than those approved by the Committee shall be used on any Lot. In addition, the Owner of each Lot shall comply with the terms and provisions of any city-wide, Integrated Pest Management Program that may be adopted by the City of Hays that applies uniformly to all land located within the City of Hays.

(n) Development by Declarant. Notwithstanding anything contained in this Declaration to the contrary, Declarant, its successors, transferees, or assigns may conduct business activities related to the development and sale of the Property, and may maintain such Improvements as Declarant determines, in Declarant's sole discretion, to be necessary or appropriate therefor.

ARTICLE 4
ARCHITECTURAL CONTROL COMMITTEE

(a) Membership. The Committee shall be composed of three (3) persons. The initial members of the Committee are JIM C. ELLIOTT, DALTON G. ELLIOTT and CHRIS CAMPBELL, as appointed by Declarant pursuant to a Designation of Architectural Control Committee for Elliott Ranch Subdivision recorded in Volume 1246, Page 549 of the Official Public Records of Hays County, Texas. The appointment of said members of the Committee is hereby in all respects confirmed and ratified. No member of the Committee shall be entitled to any compensation for services performed pursuant to this Declaration. Prior to the Transfer Date as defined in Article 11(c)(ii), Declarant shall have the right to appoint and change the membership of the Committee. At any time and from time to time after the Transfer Date, the Board shall have the power to change the membership of the Committee. Any member of the Committee may resign therefrom, and the remaining members of the Committee shall appoint his successor, subject to change by Declarant prior to the Transfer Date or the Board after the Transfer Date.

(b) Approval of Plans and Specifications. No Improvement, and no antenna nor any mechanism or device that provides for the collection, storage or distribution of solar or wind energy for use as thermal, mechanical or electrical energy and that is not part of a building, shall be erected, placed, altered or maintained on any Lot until a copy of the Plans and Specifications and a plan showing the location of such Improvements have been delivered to and approved by the Committee as to the quality of workmanship and materials, harmony of external design with the existing Improvements and as to the location with respect to topography and finished grade elevations. The Committee shall have the power to employ professional consultants to assist it in discharging its duties. The Committee may require the payment by each applicant of a fee in the amount as established from time to time by the Committee as a condition to its review and approval of such Plans and Specifications, and may further condition its approval of such Plans and Specifications upon the payment of the Construction Deposit as hereinafter provided. All decisions of the Committee shall be by the vote of at least two (2) members of the Committee. The decision of the Committee shall be final, conclusive, and binding upon the applicant.

(c) Approval Procedure. Two (2) complete sets of the final Plans and Specifications for all Improvements shall be submitted to the Committee prior to the construction of any Improvement. The Plans and Specifications shall be properly prepared in a manner so as to be clearly understood. Each application shall be considered on its own merit, and approval of specific elements for one Lot shall not necessarily be approval for another Lot. The Committee is authorized and empowered to consider and review any and all aspects of construction, construction of other Improvements and location, quality and quantity of landscaping on the property, which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials that may be permitted, in accordance with the reasonable opinion of the Committee. The Committee is authorized to request the submission of samples of proposed construction materials. At the option

of the Committee, one complete set of the Plans and Specifications will be retained by the Committee, and one complete set of plans will be marked "Approved" and returned to the Owner or his designated representative. If found not to be in compliance with this Declaration, one set of such Plans and Specifications shall be marked "Disapproved," accompanied by a reasonable statement of items found not to comply with this Declaration. The Committee's approval or disapproval, as required herein, shall be in writing; provided, if the Committee fails to approve or disapprove the Plans and Specifications within thirty (30) days after the Plans and Specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval by the Committee will not be required. Unless prohibited by this Declaration, when, in the opinion of the Committee, a waiver or modification of any of the restrictive covenants therein would not impair or detract from the high quality of the Property, it may, by written instrument in recordable form, waive or modify any restriction. Any material modifications or changes to the approved set of Plans and Specifications must again be submitted to the Committee for its inspection and approval. Material modifications or changes in Plans and Specifications for residential improvements must be approved or disapproved in writing within ten (10) business days or such modifications or changes shall be deemed to be approved.

(d) Construction Deposit. Notwithstanding anything contained herein, the construction of the first residence on a Lot shall not commence unless and until, the Owner of such Lot shall pay to the Association the sum of \$2,000.00 (the "**Construction Deposit**") to secure the obligation of such Owner to repair any damage to the Private Streets or the Common Areas caused by the Owner, or its contractors, and their respective agents, employees, subcontractors, or suppliers during the construction of the single family residence on such Lot ("**Construction Damage**"). The Construction Deposit shall be held in an account established by the Association, without liability to the Owner for any interest on the Construction Deposit. Each Owner shall be responsible for and shall at such Owner's sole cost and expense repair any Construction Damage prior to the occupancy of the single family residence constructed on such Owner's Lot. If an Owner fails to so repair all Construction Damage, the Association may cause the Construction Damage to be repaired and may use the Construction Deposit to pay the cost incurred by the Association in repairing the Construction Damage. The Construction Deposit, however, shall not be construed or in any way considered to be the measure of an Owner's liability for any Construction Damage or to limit the obligation of an Owner to pay for the actual amount required to repair all Construction Damage. Each Owner shall be liable for the costs to repair all Construction Damage in excess of the Construction Damage, and such Owner's Lot shall be subject to a special Assessment levied against such Owner's Lot for such excess costs in addition to the liens provided in Article 9 of this Declaration. The Construction Deposit shall be returned to the Owner upon the Board, or its designee, confirming that all Construction Damage has been repaired by the Owner.

(e) Adoption of Rules. The Committee may adopt such procedural and substantive rules, standards, policies and development guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties and the orderly development of the Property, including but not limited to a building code, a fire code, a housing code, architectural guidelines, landscaping guidelines, and other similar codes or guidelines as it may deem necessary and

desirable. Such rules, standards, policies, procedures and development guidelines shall be binding and enforceable against each Owner in the same manner as any other restriction set forth herein. Nothing contained herein shall be deemed to affect any approval granted by the Committee in accordance with the terms of this Declaration prior to the amendment of such rules, standards, policies, procedures or development guidelines. The approval, or deemed approval, of any Plans and Specifications by the Committee shall not in any manner be deemed or construed to constitute any representation, assurance, opinion or determination that such Plans and Specifications comply with any applicable code or regulation, including without limitation, compliance with the applicable provisions of the plumbing code or other regulations of the City of Hays with respect to connection to the City of Hays water system. The Owner of each Lot shall be required to comply with the plumbing code, water conservation program and other rules and regulations adopted from time to time by the City of Hays that apply uniformly to all residential properties connected to the City of Hays water system.

(f) No Waiver of Future Approvals. The approval or consent of the Committee to any Plans and Specifications 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.

(g) Nonliability of Committee Members. Neither the 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 or entity for any loss, damage or injury arising out of or 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 such person. Neither the Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

(h) Address. Plans and Specifications shall be submitted to the Committee at 4105 Medical Parkway, Austin, Texas 78756, or such other address as may be designated from time to time by the Committee by written designation of such address recorded in the Real Property Records of Hays County, Texas. A copy of such designation of address shall be given to the City of Hays, Texas.

ARTICLE 5 RESTRICTIVE COVENANTS

(a) Dwelling Types and Garages. No dwelling shall be erected, altered, placed or permitted on any Lot other than one detached, single-family dwelling, and with a private garage for not less than two (2) cars. All garages shall open to the side or rear of the Lot and shall not face or open onto any Private Street. No carports shall be erected or permitted on any Lot without the express approval of the Committee.

(b) Height. No building, structure, antenna or other Improvement erected or placed on any Lot shall exceed two and one-half (2 ½) stories or forty-five (45) feet in height.

(c) Dwelling Size. No one-story single-family residential dwelling, exclusive of open porches and garages, shall contain less than 2,000 square feet. No two-story nor two and one-half (2 ½) story single-family residential dwelling, exclusive of open porches and garages, shall contain less than 2,500 square feet, of which not less than 1,800 square feet shall be on the first floor.

(d) Setback Requirements. No dwellings and other Improvements (other than fences and landscaping as provided herein) shall be constructed or permitted on any Lot within the building setbacks as designated on the plat of the Property within which such Lot is located.

(e) Fences, Walls and Hedges. No exterior fences, walls and hedges may be erected, placed, or altered on any Lot which extends beyond the front of the dwelling erected thereon toward the Private Street or any public street, road or highway on which the Lot is situated unless and until the Plans and Specifications showing the construction and location of such walls, fences or hedges are submitted to the Committee and approved as to design, materials, and height; provided in no event shall any such fences, walls or hedges be located closer than twenty-five (25) feet from the front Lot line on the Private Street or any public street, road or highway on which the Lot is located, except those fences as approved by the Committee located along driveways. All fences shall be a "3-rail PCV" fence or constructed of metal pipe of at least 1.5" in diameter, ornamental iron, masonry, rock, wood or any combination thereof. No barbed wire, T-Bar post, hog wire, chicken wire or chain-link fences shall be permitted on any Lot within five (25) feet from any front Lot line.

(f) Masonry Requirements. All single-family dwellings shall have a minimum of 100% of the exterior front wall facing the Private Street or any public street, road or highway on which the Lot is located of stone or masonry construction, and no less than 75% of the total of all exterior walls shall be of stone or masonry construction. In computing these percentages, (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls; and (3) stone and masonry used on fireplaces, chimneys and walls of an attached garage may be included in the computation as stone or masonry used. A substitute for the masonry requirements of certain select cedar, redwood, or other similar materials may be submitted to the Committee for approval.

(g) Roofs. Roofs shall consist of non-glare metal, tile or three-dimensional fiberglass asphalt or composition shingles with a life of 20 years or more. Shingle color shall be subject to the approval of the Committee; provided no white roof color or reflective roofing materials shall be permitted. Any other type of roof must be approved by the Committee.

(h) Driveways. All driveways providing access to a dwelling shall be constructed of concrete or asphalt, and shall extend from the Private Street or any public street, road or highway on which the Lot is located to the garage. All driveways shall be installed and constructed so as to not interfere with drainage facilities located within, to not obstruct or retard the flow of stormwater

or drainage within, or that should inhibit the maintenance of, any Private Street, or any public street, road or highway, or any drainage easement. The Committee shall have the right to impose limitations on all driveways (including all internal driveways or accessways) and related drainage facilities (including culverts and pipes) with respect to design, materials, aprons, location and point of contact of such driveways with the Private Street or public street, road or highway on which the Lot is located.

(i) Exterior of Structures. The exterior walls of all buildings, barns, outbuildings and other structures shall be weather-proofed by painting or other appropriate method.

(j) Antennas, Satellite Dishes. No radio or television aerial wires, antennas or satellite dishes shall be placed forward of the main ridgeline of the dwelling or the midpoint of the main ridgeline of any dwelling whose ridgeline is not parallel to the Private Street or public street, road or highway on which the Lot is located. No antennae or satellite dish shall be visible from any Private Street, public street, road or highway, or other Lot, and shall be screened by fence or hedge to conceal them from view from any Private Street, public street, road or highway, or any Common Area.

(k) Solar Collectors, Wind Generators. No solar collectors or wind generators shall be erected or maintained on any Lot without the approval of the Committee, except for solar collectors integrated into the design of the dwelling. Any such approved installation shall be in harmony with the design of the dwelling, and shall be installed in a location or shall be screened from view from any Private Street, public street, road or highway, or Common Area.

(l) Recreational Equipment. No recreational equipment, including but not limited to swing sets, basketball courts or nets, sport courts, or swimming pools, shall be located between the front of the dwelling and the Private Street or public street, road or highway on which the Lot is located.

(m) Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as unreasonably to interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. 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 permitted signs or similar activities, provided that such construction (i) has been permitted by the appropriate governmental authorities, (ii) is conducted during daylight hours, and (iii) is pursued to completion with reasonable diligence and conforms to construction practices customary in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Committee, provided that such waiver shall be only for the reasonable period of such construction.

(n) Unfinished Structures. No structure shall remain unfinished for more than twelve (12) months after construction has commenced.

(o) Exterior Lighting. All Owners shall submit a lighting plan for any exterior lighting to be installed or placed on a Lot, showing locations, spacing, standard types and light type and sizes, provided reasonable Christmas lighting and displays shall be permitted during the month of December without prior approval; provided all such lighting shall be removed by January 15 of each year. Exterior lighting shall be designed and shielded to minimize affect on other Lots and any Common Areas. No exterior lighting shall be installed or maintained that is found to be objectionable, and upon notice that the Committee that such lighting is objectionable, such lighting shall be removed or modified in such manner so that it is no longer objectionable to surrounding Owners.

(p) Landscaping. All Owners shall submit a landscaping plan as part of the Plans and Specifications. It is intended that all landscaping shall recognize, utilize and supplement the existing landscape and visual resources by retaining the natural character of the Property, and that all landscaping introduced shall be viable, of a consistent quality and provide for visual harmony through color and textural variety. Native landscaping and drought tolerant plant species should be used to the maximum extent reasonable practicable. Landscaping shall not be placed in any drainage easement or buffer area that will change the direction or flow of drainage within the easement or that may obstruct or retard the flow of stormwater runoff or drainage to or through such easement, or that would inhibit the maintenance of such drainage easement. Existing trees in excess of eight (8) inches in diameter measured three (3) feet from natural grade shall be preserved and protected to the maximum extent reasonably possible. All Owners shall be required to landscape all areas that are disturbed by an construction on the Lot; the yard area between the dwelling and the Private Street or public street, road or highway on which the Lot is located, the back and side yards but not to exceed seventy-five (75) feet of the dwelling, and adjacent to the foundations of all buildings and structures located on the Lot. Trees, shrubs, ground covers, seasonal color and turf grass shall be used in these areas to achieve the landscape intent of this Declaration. Either permanent turf grass or Winter Rye shall be established in all turf areas shown on the approved landscape plan by the Owner or builder prior to the occupancy of any residence constructed on a Lot. Winter Rye shall be considered a temporary measure to reduce soil erosion through the winter season. It shall be completely replaced with turf grass according to the approved landscape plan by May 1 of the following year. Trees, shrubs and turf areas (as provided above) shall be planted by the Owner or builder prior to the occupancy of any residence constructed on a Lot, the season notwithstanding.

ARTICLE 6
RESUBDIVISION OF LOTS.

No Lot may be resubdivided into two or more lots without the specific approval of the Committee and without approval of a replat, or an amended plat, of such lots in accordance with the applicable regulations of the City of Hays and Hays County, Texas; provided, two or more adjacent Lots, at least one of which has no improvements, may be resubdivided in order to combine or increase the size of such Lots without the approval of the Committee if such resubdivision reduces the number of such Lots and does not result in the reduction of the size of any of such Lots. Any such resubdivision approved by the Committee or permitted without the approval of the Committee

as provided above shall require the approval of a replat, or an amended plat, in accordance with all applicable requirements of the City of Hays and Hays County, Texas. Notwithstanding any provision of this Declaration to the contrary, in the event any Lot is resubdivided in accordance with the provisions hereof, for purposes of the Assessments provided for in Article 12, the amount of the Assessment levied against any such resubdivided Lot shall be adjusted proportionately as follows: (1) for any resubdivided Lot that was created by dividing an original Lot into two or more Lots, the Assessment shall be an amount equal to the per Lot Assessment for Lots that have not be resubdivided multiplied by a percentage, the numerator of which is the acreage contained within the resubdivided Lot and the denominator of which the acreage of the original Lot from which the resubdivided Lot was created; or (2) for any resubdivided Lot that was created by combining two or more original Lots, the Assessment shall be an amount equal to the per Lot Assessment for Lots that have not be resubdivided plus the per Lot Assessment for Lots that have not be resubdivided multiplied by a percentage, the numerator of which is the acreage contained within the portion of the adjacent original Lot that was added to create the resubdivided Lot and the denominator of which the total acreage of the adjacent original Lot from which land was added to create the resubdivided Lot.

ARTICLE 7
EASEMENTS.

(a) Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities have been provided as shown on any plat of any part of the Property, and certain other easements and related rights affecting a Lot or the Property may have heretofore been granted, created and dedicated, and each conveyance of any Lot is made and accepted subject to all of such easements, dedications and reservations, if any, to the extent and only to the extent the same may be in force and effect of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property. Within these easements, no structure, trees, vines, plants or any other thing shall be placed or permitted to remain which may in any way damage or interfere with the installation or maintenance of utilities, drainage or water quality facilities, or drainageways, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Each Owner covenants to provide easements for drainage and water flow as required by the land contours and the arrangement of Improvements approved by the Committee. The easement areas within each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Prior to the Transfer Date, Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically inserting, repairing or maintaining public utilities, and further reserves the right to grant, dedicate, reserve or otherwise create, at any time and from time to time, easements for public utility purposes along and on either or both sides of any Lot line, which easement shall not exceed seven and one-half (7-1/2) feet in width on each side of any Lot line; provided, Declarant's rights to make such changes in and additions to the above easements shall automatically be transferred to the Association on the Transfer Date. There is further hereby created an easement upon, across, over and under all of the Property and easement for purposes of ingress

and egress in connection with the installation, maintenance and repair of all public utilities and appurtenances thereto. No easement granted to the City of Hays may be altered or modified without the written consent of the City of Hays.

(b) Access Easement Over the Private Streets; Easements of Enjoyment. Subject to the provisions of this Declaration every Member shall have the right and easement of enjoyment over and across the Private Streets for purposes of pedestrian and vehicular access to and from the Lots, and in and to any Common Area hereafter conveyed to the Association, which rights and easements shall be an appurtenant to each Lot.

(c) Private Streets. Declarant shall convey the Private Streets to the Association, and the Association shall thereafter be responsible for the operation and maintenance of the Private Streets.

(d) Greenbelt, Association Property and other Common Area. On or before the Transfer Date, Declarant shall convey the Greenbelt, the Association Property and any other Common Area to the Association. The Association shall thereafter be responsible for the operation and maintenance of the Association Property and any other Common Area, subject to the terms and provisions of this Declaration and the easements and uses shown on the plat(s) of the Property.

(e) Insurance. The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements within the right-of-way of the Private Streets, or on the Association Property and any other Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the insurable improvement within the right-of-way of the Private Streets or on the Association Property or any other Common Area in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Private Streets, the Association Property and any other Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its agents, and may, at the discretion of the Board, obtain directors' and officers' liability insurance. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) combined coverage limit. Premiums for all such insurance shall be at the expense of the Association. The insurance policy or policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(e) Extent of Easements. The rights and easements of enjoyment created hereby with respect to the Private Streets, the Greenbelt and any Common Area shall be subject to the following:

- (i) The right of the Association to prescribe rules and regulations for the use, enjoyment, and maintenance of the Private Streets and the Association Property and any other Common Area;

- (ii) The right of the Association to sell and convey any Common Area, or any part thereof, provided such sale or conveyance is approved by two-thirds (2/3rds) 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, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting;
- (iii) The right of the Association to borrow money for the purpose of constructing, maintaining and improving the Private Streets, the Association Property or any other Common Area, or any part thereof, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (iv) The right of the Association to take such steps as are reasonably necessary to protect the Private Streets, the Association Property and any other Common Area, or any part thereof, against foreclosure;
- (v) The right of the Association to suspend the easements of enjoyment with respect to the Association Property and any other Common Area of any Member of the Association during which time any Assessment levied under the provisions of this Declaration remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (vi) The subdivision, platting and other applicable regulations of the City of Hays and Hays County, Texas, and the terms, conditions and provisions of any easement granted to the City of Hays, Hays County, or the public as to any portion of the Private Streets, the Greenbelt or other Common Area.

ARTICLE 8
UTILITIES.

(a) Wastewater Service. No dwelling or other structure shall be occupied unless and until connected to a public sanitary sewer system or a private, on-site wastewater system that has been approved by the Hays County Environmental Health Department. Unless and until a public wastewater system is available to a Lot, the Owner of each Lot, at his sole cost and expense, shall be solely responsible for obtaining all permits and approvals required for an individual wastewater system. No private collective wastewater system shall be permitted without the approval of Declarant, and any such private collective wastewater system so approved shall comply with the applicable regulations of the governmental authorities having jurisdiction over the same. The Owner of each Lot shall be required to connect to a public wastewater system within eighteen (18) months after such a public wastewater system is functioning and available to a boundary of such Owner's Lot.

(b) Water Service. No dwelling or other structure shall be occupied unless and until connected to the City of Hays public water system. Notwithstanding the foregoing, until such water system is functioning and available to the boundary of a Lot within Phase 1, connection of a dwelling on any Lot within Phase 1 to an individual water well shall be permitted, and the Owner of each Lot in Phase 1, at his sole cost and expense, shall be solely responsible for obtaining all permits and approvals required for an individual water well. The Owner of each Lot in Phase 1 which has obtained water service from a private well prior to the date the City of Hays public water system is functioning and available to such Owner's Lot shall be required to connect the dwelling to the City of Hays' public water system within eighteen (18) months after such a public water system is functioning and available to a boundary of such Owner's Lot and such dwelling shall not be permitted to receive water service from such well; provided, an individual private well installed within Phase 1 prior to the date the City of Hays water system is functioning and available to such Lot shall be permitted to supply water solely for irrigation purposes, subject to compliance with all applicable governmental regulations for such well. After the date the City of Hays water system is functioning and available to the boundary of each Lot, all Lots shall be required to connect to the City of Hays water system. Except for dwellings within Phase 1 as and subject to the limitations provided above, no dwelling or other structure shall be connected to or obtain water from a private water well. Certain ground water rights with respect to all of the Property have been transferred to the City of Hays, and the City of Hays has committed to provide water service to all of the Lots within the Property, in accordance with a Development Agreement for Elliott Ranch Subdivision between Declarant and the City of Hays. Pursuant to the terms of the Development Agreement for Elliott Ranch Subdivision, Declarant shall convey to the City of Hays certain property within the Property on which a ground storage tank and pumping station shall be located as part of the City of Hays public water system. Each Owner is advised that the City of Hays may, at its discretion, construct an elevated storage tank on such property as it may determine to be appropriate or advisable in connection with the upgrade and operation of its water system.

(c) Electric Service. The Owner of each Lot shall, at his own cost and expense, furnish, install, own and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) electrical service and appurtenances (except as herein provided) from the meter installed upon the Lot by the electric company to such point as may be designated by such company on the property line of such Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter.

(d) Solid Waste Collection. Pursuant to the terms of a Solid Waste Collection Agreement between Declarant and the City of Hays, the City of Hays will provide solid waste collection service to each Lot within the Subdivision. The Owner of each Lot shall be required to obtain solid waste collection service from the City of Hays and to comply with all applicable rules and regulations pertaining to such service during the term of such Solid Waste Collection Agreement with the City of Hays. During the term of such Solid Waste Collection Agreement with the City of Hays, the Owner of each Lot shall not be entitled to obtain solid waste collection service from any other entity or person providing such services. Notwithstanding the foregoing, in the event the Property or any Lot within the Subdivision is annexed by the City of Hays, upon such annexation by the City of Hays,

the Owner of each Lot so annexed shall be required to obtain solid waste collection services from the City of Hays in accordance with the solid waste collection service requirements, rules and regulations adopted from time to time by the City of Hays that apply uniformly to all properties within the City of Hays.

ARTICLE 9
COMPLIANCE WITH PROVISIONS OF RESTRICTIONS;
LIEN FOR MAINTENANCE COSTS AND FORECLOSURE.

Each Owner shall comply strictly with the provisions of this Declaration as from time to time amended. Failure to comply with any of the provisions of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by any Owner or the Board. The Committee shall have the power to enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours' written notice, without being liable to any Owner, upon any Lot or into any Improvement thereon, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration, and the expense incurred by the Committee or its duly authorized agents in connection with the entry upon any Lot or Improvement and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, payable within five (5) days after written demand for reimbursement, and shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon. To evidence the aforesaid lien for payment of such maintenance costs, the Committee may prepare a written notice of maintenance lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notice shall be signed by one of the members of the Committee and shall be recorded in the Official Property Records of Hays County, Texas. The aforesaid lien for payment of maintenance costs shall attach on the date the payment of such maintenance costs becomes delinquent. The Committee may enforce such lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Article 51.002 of the Texas Property Code, as the same may be amended or modified, or the Committee may institute suit against the Owner for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the affected Lot shall be required to pay all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Committee in connection with any foreclosure proceeding, whether judicial or non-judicial. The Committee shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The lien for payment of maintenance costs provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of any first lien Mortgage superior to the lien for the delinquent maintenance costs, the lien for the delinquent maintenance costs will be extinguished, and the delinquent maintenance costs shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of maintenance costs as herein provided will not relieve any Owner from the obligation to pay such maintenance costs subsequently becoming due and payable.

ARTICLE 10
NO WARRANTY OF ENFORCEABILITY.

While Declarant has no reason to believe that any of the covenants, terms or provisions of this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such covenant, term or provision. Any Owner acquiring a Lot in reliance on one or more of such covenants, terms or provisions shall assume all risks of the validity and enforceability thereof, and by acquiring such Lot agrees to hold Declarant harmless therefrom.

ARTICLE 11
THE ASSOCIATION.

(a) Organization. At any time after the date of this Declaration, but in all events on or before the Transfer Date, Declarant shall cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed in its Articles and Bylaws, in this Declaration, and by applicable law. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Membership. Each Owner, including Declarant, of a Lot shall automatically and concurrently shall become a Member of the Association upon the formation and incorporation of same. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

(c) Voting Rights. The right to cast votes and the number of votes which may be cast for election of the Board, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (i) below are hereinafter sometimes referred to as "Class A Members." Declarant, which is entitled to vote pursuant to (ii) below, is hereinafter sometimes referred to as the "Class B Member."

- (i) The Owner (other than Declarant) of each Lot within the Property shall have one (1) vote for each Lot so owned.
- (ii) Declarant shall have one (1) vote for each Lot owned by Declarant and three (3) votes for each vote held by the Class A Members until the earlier of (1) the date the Declarant elects to terminate the Class B membership, or (2) December 31, 2011 (the "**Transfer Date**"). Thereafter, the Class B membership shall cease and be converted to Class A membership, and Declarant shall have only one (1) vote for each Lot owned by it, if any. The total votes held by the Class A members and the total votes held by the Class B members shall be recalculated upon the recording of a Supplemental Declaration which results in any addition to or subtraction of lands from the Property.

Any property interest entitling the Owner thereof to vote as herein provided held jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest. 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 Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

(d) Duties of the Association. Subject to and in accordance with this Declaration and after the incorporation of the Association, the Association acting through the Board shall have and perform each of the following duties:

- (i) accept, own, operate, and maintain the Private Streets, the Greenbelt, and all personal and real property conveyed to or leased by the Association ("**Association Property**"), together with all Improvements thereon and all appurtenances thereto, including any other Common Area hereafter conveyed or leased to the Association by Declarant;
- (ii) to maintain the Private Streets, the Greenbelt, and any other Common Area and all Improvements thereon and all appurtenances thereto, including the drainage easements, water quality buffers, conservation areas, detention ponds and related storm water structures and features that may be located thereon, in accordance with their design, the unpaved areas (including any median areas) within any Private Street, and any entry improvements, signs and associated landscaping;
- (iii) pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Association Property and any Common Area, to the extent that such taxes and assessments are not levied directly upon the Members; and the Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments;
- (iv) obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association;
- (v) make, establish, promulgate, and in its discretion amend or repeal and reenact, the Bylaws and such rules not in conflict with this Declaration as it deems proper, covering any and all aspects of its functions, including traffic controls, speed limits and other regulations of the use of the Private Streets, the Greenbelt, the Association Property and any Common Area;
- (vi) keep books and records of the Association's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by the Owners and the Mortgagees upon request during normal business hours; and
- (vii) carry out and enforce all duties of the Association set forth in this Declaration.

(e) Powers and Authority of the Association. After the incorporation of the Association, the Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such powers 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 and the Board, acting on behalf of the Association after the incorporation thereof, shall have the following power and authority at all times.

- (i) The Association shall have the power and authority to levy Assessments in accordance with and as provided in this Declaration.
- (ii) The Association shall have the power and authority to enter at any time in an emergency (or in a non-emergency after twenty-four (24) hours written notice to the Owner of the affected Property), without being liable to any Owner, upon any Lot or any Common Area for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any Private Street, the Greenbelt, any Lot, Common Area, Improvement, or other facility so as to conform to this Declaration. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any items of construction on a Lot in enforcing this Declaration before judicial proceedings are instituted by the Association. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the affected Lot, shall be a lien upon such Lot and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided herein for regular and special Assessments.
- (iii) The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of an 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, this Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce this Declaration; 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.
- (iv) The Association shall have the power and authority to grant and convey to any person or entity any Association Property, and/or any Common Area and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, liens or security interests, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

walks, driveways, parking lots, trails, and paths;

lines, cables, wires, conduits, pipelines, or other devices for utility purposes;

sewer, wastewater and water systems, storm water drainage systems, sprinkler systems, and pipelines; or

any similar Improvements or facilities.

Nothing in this subparagraph (iv) shall be construed to permit the use or occupancy of any Improvement or other facility in any way which would violate other provisions of this Declaration.

- (v) The Association shall have the power and authority to retain and pay for the services of a manager to manage and operate the Association, including the maintenance and repair of the Private Streets, the Greenbelt, the Association Property and any other Common Area, 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 duties, powers, and functions to the manager. The Members of the Association 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.
- (vi) The Association shall have the power and authority:
 - a. to retain and pay for legal and accounting services necessary or proper in the operation of the Association;
 - b. to pay for all maintenance, repair, replacement, upgrade, resurfacing and other improvements required to maintain the Private Streets in a good and passable condition consistent with similar private streets in the surrounding area;
 - c. to pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to and all maintenance of the Common Areas, including the entryway Improvements and the unpaved areas within the Private Streets, and the Association Property in accordance with this Declaration;
 - d. to obtain and pay for any other property and 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 or this Declaration;
 - e. to construct new Improvements or additions to the Association Property or any Common Area, subject to the approval of the Committee;

f. to enter into contracts with Declarant and with any other person on such terms and provisions as the Board shall determine to carry out the duties of the Association under this Declaration, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise; and

g. to borrow money and to mortgage, pledge or hypothecate any or all of the Association Property as security for money borrowed or debts incurred subject to the limitation set forth in this Declaration.

(f) Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorney's fees reasonably incurred by such person in connection with such action, suit or proceeding, if it is found and determined by the Board or a Court that such person (i) 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 (ii) 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 such 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. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE 12
ASSESSMENTS

(a) Assessments. Assessments established pursuant to this Declaration shall be levied against each Lot within the Property for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and for the improvement and maintenance of the Private Streets, the entryway Improvements, the unpaved areas within the Private Streets, any Common Area, and the Association Property. The funds of the Association shall be used solely for purposes authorized by this Declaration.

(b) Operating Fund. The Board shall establish an operating fund into which shall be deposited the portion of the Assessments allocated to the operation of the Association as provided below and all other monies paid to the Association (except the portion of the Assessment allocated to capital replacements as provided below) and from which disbursements shall be made in performing the general operations and management functions of the Association under this

Declaration.

(c) Capital Replacement Reserve. The Board shall establish a capital replacement reserve account into which shall be deposited the portion of the Assessments allocated to capital replacements and from which disbursement shall be made in performing major repairs, upgrade and replacements of the Private Streets, the Association Property and the Improvements in the Common Areas.

(d) Regular Annual Assessments. For the fiscal year of the year of incorporation of the Association, the Board shall establish a budget for the Association, and as of January 1 of the year following incorporation, may levy assessments based on that budget against all Lots. The budget shall include such items as may be appropriate for the anticipated costs to repair, upgrade and replace the Private Streets, the Association Property and the Improvements in the Common Areas, and based on the budget, the Board shall determine the portion of the Assessments allocated to general operations and management of the Association and the portion of the Assessments allocated to the capital replacements. The regular annual Assessments may be levied in a uniform amount against all Lots, or at the discretion of the Board, the annual Assessment may be levied in different amounts as to groups of Lots based on the use or benefit determined by the Board to be derived by such groups of Lots from the costs of the Association for which the Assessments are levied. The annual Assessment per Lot for the first fiscal year shall not exceed Four Hundred Twenty and No/100 Dollars (\$420.00) without the assent of two-thirds (2/3rds) of the votes of each class of Members who are eligible to vote at a meeting duly called to vote on such matter with at least sixty percent (60%) of Members who are eligible to vote represented in person or by proxy. For each fiscal year thereafter, the Board shall estimate the net expenses of the Association for such fiscal year, which shall be (i) the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including but not limited to the cost of all duties required and activities authorized herein of the Association, the Board, and the Committee, and a reasonable provision for contingencies and the replacement reserves, less (ii) any expected income and any surplus from the prior year's operating fund. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein, and the Assessments so levied by the Board shall be final and binding so long as it is made in good faith. All such regular annual Assessments shall be due and payable to the Association, at the discretion of the Board, either in one (1) payment within sixty (60) days after the beginning of the fiscal year or in twelve (12) monthly payments equal to 1/12th of the total annual Assessment, or at such time and in such other manner as the Board may from time to time designate.

(e) Declarant Assessment. Notwithstanding the foregoing provisions of this Article, with respect to any Lots owned by Declarant, Declarant shall be required to pay the portion of the Assessment allocated to the capital replacement reserve for each Lot owned by Declarant and in lieu of the portion of the Assessment allocated to general operations for all Lots owned by Declarant, Declarant shall be required to pay an amount equal to the difference between the total of the portion of the Assessment allocated to general operations for all Lots not owned by Declarant and the amount of the actual expenses incurred by the Association. Nothing in this subsection shall be construed to relieve an Owner other than Declarant from payment of full annual Assessments for every year after a Lot is conveyed by Declarant.

(f) Special Assessments. In addition to the regular annual Assessments provided herein, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration, including without limitation the maintenance of the Private Streets and the storm water control structures that may be located on any Common Area. The amount of any special Assessments shall be at the reasonable discretion of the Board. In no event shall the total special Assessment per Lot during the first fiscal year exceed One Hundred and No/100 Dollars (\$100.00) per Lot without the assent of two-thirds (2/3rds) of the votes of all of the Members who are eligible to vote at a meeting duly called to vote on such matter, with at least sixty percent (60%) of the Members who are eligible to vote represented in person or by proxy. All such special Assessments shall be due and payable to the Association at such time and in such other manner as the Board may designate, in its sole and absolute discretion. The Association may levy in any fiscal year a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital Improvement upon the Common Area.

(g) Owner's personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner as of the date of levy of the Lot subject to each such Assessment, and no Owner shall be exempt from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot subject thereto shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection including reasonable attorneys' fees. The Board shall have the right to charge late fees for delinquent payment of Assessments in such amount as the Board may from time to time deem appropriate. In addition, any Owner who is in default in the payment of any Assessment shall not be entitled to vote on any matter requiring a vote by the Owners under this Declaration, shall not be entitled to vote as a Member on matter requiring a vote of the Members under this Declaration, and shall be subject to the loss of the right to use any Common Area, if the Board so determines, until all Assessments, interest and late charges owing by such Owner have been paid in full.

(h) Exempt Property. All Private Streets, the Greenbelt, all Association Property and any other Common Area and all portions of the Property dedicated to, and accepted by, a local public authority and all portions of the Property 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.

Without limiting the generality of the foregoing, no assessments shall be made against any Lot owned by the City of Hays for the operation or maintenance of the water system or for any other public purpose. Notwithstanding the foregoing, no land or Improvements devoted to dwelling use shall be exempt from said Assessments.

(i) Assessment Lien and Foreclosure. All regular and special Assessments provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements thereon, which shall bind such Lot and Improvements and the Owner thereof and such Owner's heirs, devisees, personal representatives,

successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such Assessments. Such liens shall be superior to all other liens and charges against such Lot, except only for tax liens and the lien of any first lien Deed of Trust of record and securing sums borrowed for the acquisition or improvement of such Lot. The Board in its sole discretion may subordinate its Assessment liens to any other lien, and any such subordination shall be signed by an officer of the Association. To evidence any Assessment liens hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the unpaid Assessments, the name of the Owner of the Lot subject to such Assessments and a description of such Lot, which shall be signed by an officer of the Association and may be recorded in the Office of the County Clerk of Hays County, Texas. Any Assessment lien hereunder shall attach with the priority set forth herein from the date payment is due. Upon the written request of any Mortgagee, the Association shall report to such holder of a first lien Deed of Trust against a Lot any Assessments then unpaid with respect to any Lot on which such first lien holder is the Beneficiary of a Deed of Trust.

Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his Lot, expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessment, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office of the County Clerk of Hays County, Texas. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, at the door of the County Courthouse of Hays County, Texas, on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public vendue after the trustee and the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Hays County, Texas, and, in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale by certified mail on each

of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

It is the intent of the provisions of this Article to comply with the provisions of Texas Property Code § 51.002, relating to non-judicial sales by power of sale and, in the event of the amendment of said § 51.002 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other Owner or holder of any Deed of Trust lien against any Lot or other person may, by amendment to this Declaration filed in the Office of the County Clerk of Hays County, Texas, amend the provisions hereof so as to comply with said amendments to § 51.002.

ARTICLE 13
TERM.

This Declaration are covenants running with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for successive periods of ten (10) years, unless amended in accordance with Article 14 below or terminated (i) by the Owners entitled to cast at least three-fourths (3/4ths) of the votes for each class of Members who are voting in person or by proxy at a meeting duly called to vote on such matters (if the Association has been incorporated), or (ii) by a written instrument executed by at least three-fourths (3/4ths) of the Owners.

ARTICLE 14
AMENDMENT.

This Declaration may be amended as follows.

- (a) Prior to the Transfer Date, this Declaration may be amended by an affirmative vote of (i) eighty percent (80%) of the Members present in person or by proxy at a meeting duly called to vote on such matter at which a quorum of the Members is so present (which quorum shall be sixty percent (60%) of the Members), if the Association has been duly incorporated by Declarant; or (ii) by joint action of Declarant and the Owners of eighty percent (80%) of the

Lots, if the Association has not been incorporated.

- (b) After the Transfer Date, and in addition to any amendment pursuant to subparagraph (a), this Declaration may be amended by the recording in the Hays County Official Property Records of an instrument executed and acknowledged (i) by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by at least three-fourths (3/4ths) of a quorum of the Members present in person or by proxy at a meeting duly called to vote on such matter (which quorum shall be sixty percent (60%) of the Members), if the Association has been incorporated; or (ii) by at least three-fourths (3/4ths) of the Owners, if the Association has not been incorporated.
- (c) In addition to the foregoing, prior to the Transfer Date, Declarant may amend this Declaration, without the consent or approval of the Members or the Owners, at any time to correct any ambiguity, typographical or grammatical errors, or to the extent necessary to comply with Veterans Administration and/or Federal Housing Administration requirements for approval of the Property for participation in financing or loan programs.
- (d) Any amendment to this Declaration as provided herein shall be effective upon recordation in the Hays County Official Property Records of an instrument setting forth the amendment and reflecting compliance with the applicable provisions of this Article 14 authorizing such amendment.

ARTICLE 15
NOTICES.

Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally 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 being deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed to the person at the address of the Lot. Such address may be changed from time to time by notice in writing given by such person to the Committee.

ARTICLE 16
MISCELLANEOUS.

(a) Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the terms and provisions set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas and enforceable in Hays County, Texas.

(b) Exemption of Declarant. Notwithstanding any provision herein 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 Association, the Board, or the 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 types of Improvements, including but not limited to construction, sales, and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property. It is expressly provided, however, that any resubdivision, replat or amendment or other modification of any plat of the Property shall be subject to, and require compliance with the applicable regulations of the City of Hays and Hays County, Texas, and that Declarant shall not modify any drainage easements, water quality buffers, or conservation easements without the approval of the City of Hays and Hays County, Texas, as applicable. No drainage channels, detention ponds or other drainage or water quality improvements shall be modified in a manner that will increase the rate of flow or volume of water on any other person's property without such person's consent unless pursuant to rights granted under an easement for such purposes.

(c) Assignment by Declarant. Notwithstanding any provision herein 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 or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Any such assignment by Declarant shall be effective upon recordation in the Hays County Official Property Records of an instrument executed and acknowledged by Declarant evidencing such assignment.

(d) Severability. The provisions of this Declaration 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 provision or portion thereof.

(e) Gender. Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(f) Captions. All recitals, captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the text of the paragraphs, sections and articles hereof.

ARTICLE 17
ENFORCEMENT

Except as otherwise provided herein, any Owner, at such Owner's expense, shall have the right, and the Declarant and the Association shall have the right (but not the duty), to enforce any and all provisions of this Declaration and this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any such provision at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other such provision. Enforcement shall be by proceeding in law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation, enforce specific performance, to recover damages, or any one or more of such remedies. Reasonable attorney's fees shall be allowed to any party prevailing in any action in any court of competent jurisdiction to enforce any of the provisions contained in this instrument.

EXECUTED this the _____ day of February, 1999.

JIM C. ELLIOTT, Co-Independent Executor of the ESTATE
OF ROY C. ELLIOTT, DECEASED

DALTON G. ELLIOTT, Co-Independent Executor of the
ESTATE OF ROY C. ELLIOTT, DECEASED

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of February, 1999, by
JIM C. ELLIOTT, as Co-Independent Executor of the ESTATE OF ROY C. ELLIOTT, DECEASED.

NOTARY PUBLIC, State of Texas
Print Name: _____

1509 056

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of February, 1999, by DALTON G. ELLIOTT, as Co-Independent Executor of the ESTATE OF ROY C. ELLIOTT, DECEASED.

NOTARY PUBLIC, State of Texas

Print Name: _____

AFTER RECORDING, RETURN TO:

R. Alan Haywood
Graves, Dougherty, Hearon & Moody, P.C.
P.O. Box 98
Austin, Texas 78767

Exhibit "C"
PUBLIC SAFETY EASEMENT

1509 057

DATE: ____ day of _____, _____

GRANTOR: **Jim C. Elliott and Dalton G. Elliott,**
Independent Co-Executors of the Estate of Roy C. Elliott, Deceased

GRANTOR'S MAILING ADDRESS: **4105 Medical Parkway,**
Austin, Travis County, TX 78756

GRANTEE: **The City of Hays, Texas**

GRANTEE'S MAILING ADDRESS (including County): **P.O. Box 1285,**
Buda, Hays County, Tx 78610

LIENHOLDER: **Hartland Bank, N.A.**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY:

All the streets, roadways and rights-of-way easements set forth on the plat of ELLIOTT RANCH, PHASE _____, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume _____, Pages _____ on the Plat Records of Hays County, Texas.

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development Agreement for Elliott Ranch Subdivision dated February __, 1999, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, and conveys to GRANTEE, its successors and assigns, an exclusive, perpetual easement for the purpose of providing public safety services, police, fire and medical services, controlling and regulating traffic, enforcing the penal code and city ordinances, and enforcing traffic regulations and controls, and giving the Grantee and its authorized officers and designees uninhibited ingress and egress over, across and through such streets, roadways, and rights-of-way for the purpose of providing public safety services, police, fire and medical services, controlling and regulating traffic, enforcing the penal code and city ordinances, and enforcing traffic regulations and controls.

The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the PROPERTY, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property as of the date this Public Safety Easement becomes effective as to portions of the Property as provided herein and not inconsistent with the Development Agreement dated February _____, 1999.

TO HAVE AND TO HOLD the above-described easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE's successors and assigns forever; and GRANTOR does hereby bind themselves, their heirs, executors, administrators, grantees, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easement unto GRANTEE, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

This Public Safety Easement shall be in full force and effect as to all or any portion of the Property only upon the annexation of such portion of the Property by the City of Hays from time to time, and GRANTEE shall not have or exercise the powers, authority and rights granted hereby with respect to the Property, or any part thereof, unless and until such time as the City of Hays annexes such phase or section of the Subdivision.

When the context requires, singular nouns and pronouns include the plural.

GRANTORS.

**Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the
Estate of Roy. C. Elliott, Deceased**

Date: _____, _____

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: _____, _____

Accepted and Approved:

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

City of Hays, Texas

William Couch, Mayor

Date: _____, _____

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the ___ day of _____, _____, by
Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, _____, by
Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

JOINDER OF MORTGAGEE

The undersigned ("Mortgagee"), being the Present legal and equitable owner and holder of a deed of trust lien against the real property on which the Property (as defined above) is located pursuant to that certain Deed of Trust dated October 19, 1995, executed by Jim C. Elliott and Dalton G. Elliott, as Independent Co-Executors of the Estate of Roy C. Elliott, Deceased ("GRANTOR") and recorded in Volume 1190, Page 712 of the Official Records of Hays County, Texas (as the same may have heretofore been amended, the "Deed of Trust"), does hereby join in the execution of this Public Safety Easement for the limited purpose of confirming Mortgagee's agreement that (a) the execution by Developer of this Public Safety Easement will not constitute a default under the Deed of Trust, or any of the other collateral documents evidencing or securing the indebtedness secured by the Deed of Trust (collectively, the Deed of Trust and such other documents, if any, are referred to herein as the "Security Documents"), and (b) the liens, security interests, assignments and/or other encumbrances effectuated by the Security Documents shall, as to any interest in real property covered by the Security Documents and now or hereinafter considered to be a part of the Property as defined in this Public Safety Easement, in all things be subordinate and inferior to the easement, rights and privileges granted by Public Safety Easement and the terms, provisions, covenants and conditions set forth herein.

HARTLAND BANK, N.A.

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of HARTLAND BANK, N.A., a national banking association, on behalf of said national banking association.

(SEAL)

Notary Public, State of Texas

After recording return to:

• City of Hays, Texas
P. O. Box 1285,
Buda, Texas 78610-1285

Exhibit "D"
UTILITY AND PUBLIC SERVICE EASEMENT

DATE: _____ day of _____, _____

GRANTOR: **Jim C. Elliott and Dalton G. Elliott,**
Independent Co-Executors of the Estate of Roy C. Elliott, Deceased

GRANTOR'S MAILING ADDRESS: **4105 Medical Parkway,**
Austin, Travis County, TX 78756

GRANTEE: **The City of Hays, Texas**

GRANTEE'S MAILING ADDRESS (including County): **P.O. Box 1285,**
Buda, Hays County, Tx 78610

LIENHOLDER: **Hartland Bank, N.A.**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: The following described property in the City of Hays, Hays County, Texas:

The streets, roadways and rights-of-way shown and set forth on the plat of ELLIOTT RANCH, PHASE _____, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume _____, Pages _____ on the Plat Records of Hays County, Texas.

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development Agreement for Elliott Ranch Subdivision dated February __, 1999, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, and conveys to GRANTEE, its successors and assigns, a perpetual easement for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating and removing or causing to be placed, constructed, operated, repaired, maintained, rebuilt, replaced, relocated and removed structures or improvements reasonably necessary for the supplying of electricity, natural gas, water, sanitary sewer, drainage and/or tele-communications or other such utility services and public services including but not limited to cable television, solid waste collection, recycling, and all other municipal services in, upon, under and across the PROPERTY as described above.

The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the PROPERTY, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property as of the date this Utility and Public Service Easement becomes effective as to portions of the PROPERTY as provided herein and not inconsistent with the Development Agreement dated February _____, 1999.

TO HAVE AND TO HOLD the above-described easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE's successors and assigns forever; and GRANTOR does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easement unto GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

When the context requires, singular nouns and pronouns include the plural.

GRANTORS.

**Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the
Estate of Roy. C. Elliott, Deceased**

Date: _____, _____

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: _____, _____

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Accepted and Approved:

City of Hays, Texas

William Couch, Mayor

Date: _____, _____

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the ___ day of _____, _____, by
Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ___ day of _____, _____, by
Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

JOINDER OF MORTGAGEE

The undersigned ("Mortgagee"), being the present legal and equitable owner and holder of a deed of trust lien against the real property on which the Property (as defined above) is located pursuant to that certain Deed of Trust dated October 19, 1995, executed by Jim C. Elliott and Dalton G. Elliott, as Independent Co-Executors of the Estate of Roy C. Elliott, Deceased ("GRANTOR") and recorded in Volume 1190, Page 712 of the Official Records of Hays County, Texas (as the same may have heretofore been amended, the "Deed of Trust"), does hereby join in the execution of this Utility and Public Service Easement for the limited purpose of confirming Mortgagee's agreement that (a) the execution by Developer of this Utility and Public Service Easement will not constitute a default under the Deed of Trust, or any of the other collateral documents evidencing or securing the indebtedness secured by the Deed of Trust (collectively, the Deed of Trust and such other documents, if any, are referred to herein as the "Security Documents"), and (b) the liens, security interests, assignments and/or other encumbrances effectuated by the Security Documents shall, as to any interest in real property covered by the Security Documents and now or hereinafter considered to be a part of the Property as defined in this Utility and Public Service Easement, in all things be subordinate and inferior to the easement, rights and privileges granted by this Utility and Public Service Easement and the terms, provisions, covenants and conditions set forth herein.

HARTLAND BANK, N.A.

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of HARTLAND BANK, N.A., a national banking association, on behalf of said national banking association.

(SEAL) _____
Notary Public, State of Texas

After recording return to:

City of Hays, Texas
P. O. Box 1285,
Buda, Texas 78610-1285

Exhibit "E"

CONSERVATION AND PUBLIC UTILITY EASEMENT

DATE: _____ day of _____, _____

GRANTOR: **Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the Estate of Roy C. Elliot, Deceased**

GRANTOR'S MAILING ADDRESS: **4105 Medical Parkway,
Austin, Travis County, TX 78756**

GRANTEE: **The City of Hays, Texas**

GRANTEE'S MAILING ADDRESS (including County): **P.O. Box 1285
Buda, Hays County, Texas 78610**

LIENHOLDER: **Hartland Bank, N.A.**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY:

The conservation areas, greenbelts and land not platted as a building lot shown and set forth on the plat of ELLIOTT RANCH, PHASE _____, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume _____, Pages _____ on the Plat Records of Hays County, Texas (the "Property").

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development Agreement for Elliott Ranch Subdivision dated February ____, 1999, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, and conveys to GRANTEE, its successors and assigns, (i) a non-exclusive, perpetual easement over, on and across the Property for the purpose of maintaining, preserving and protecting the natural processes, natural resources, water quality, habitats, ecosystems, land health and to prevent impairment and interference with the Edwards Aquifer, the Trinity Aquifer or related or adjacent aquifers by maintaining the Property as a natural greenbelt, water quality buffer and drainage area; and (ii) a perpetual easement for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing or causing to be placed, constructed, operated, repaired, maintained, rebuilt, replaced, relocated and removed structures or improvements reasonably necessary for the supplying of electricity, natural gas, water, sanitary sewer, drainage and/or tele-communications or other such utility services and cable television in, upon, under and across the PROPERTY.

The easements, rights and privileges hereby granted are expressly made by GRANTOR and accepted by GRANTEE on the subject to the following:

1. The use of the Property shall be limited to use as a greenbelt, drainage easement and conservation area for the exclusive use and benefit of the owners of lots within the Elliott Ranch Subdivision and the Elliott Ranch Homeowners Association, Inc., and as a public utility easement. No improvements shall be constructed or placed within the Property, other than drainage, detention and/or water quality and related facilities, an such passive recreational facilities (such as trails, paths or accessways and related improvements), landscaping and/or underground public utility lines and systems and related improvements, that do not change the direction or flow of drainage channels within the Property or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels.

2. GRANTOR expressly retains and reserves unto GRANTOR, the owners of lots within the Elliott Ranch Subdivision and the Elliott Ranch Homeowners Association, Inc. and their respective heirs, executors administrators, legal representatives, successors and assigns, the right (i) to place, construct, operate, repair, maintain, rebuild, replace, relocate, and remove passive recreational facilities (such as trails, paths or accessways and related improvements) and landscaping in, on across the Property; provided, the same do not change the direction or flow of drainage channels within the Property or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels and (ii) to divert and direct stormwater runoff and drainage to the Property and to use the Property for the conveyance of stormwater runoff and drainage to the extent necessary for the use and development of the lots, private streets and other improvements within the Elliott Ranch Subdivision.

The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the PROPERTY, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property as of the date this Conservation and Public Utility Easement becomes effective as to portions of the PROPERTY as provided herein and not inconsistent with the Development Agreement dated February _____, 1999.

TO HAVE AND TO HOLD the above-described easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE's successors and assigns forever; and GRANTOR does hereby bind themselves, their heirs, executors, administrators, grantees, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easement unto GRANTEE, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

When the context requires, singular nouns and pronouns include the plural.

GRANTORS.

**Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the
Estate of Roy. C. Elliott, Deceased**

Date: _____, _____

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: _____, _____

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Accepted and Approved:

City of Hays, Texas

William Couch, Mayor

Date: _____, _____

**STATE OF TEXAS §
 §
COUNTY OF TRAVIS §**

This instrument was acknowledged before me on the ___ day of _____, _____, by
Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

**STATE OF TEXAS §
 §
COUNTY OF TRAVIS §**

This instrument was acknowledged before me on the ___ day of _____, _____, by
Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

JOINDER OF MORTGAGEE

The undersigned ("Mortgagee"), being the present legal and equitable owner and holder of a deed of trust lien against the real property on which the Property (as defined above) is located pursuant to that certain Deed of Trust dated October 19, 1995, executed by Jim C. Elliott and Dalton G. Elliott, as Independent Co-Executors of the Estate of Roy C. Elliott, Deceased ("GRANTOR") and recorded in Volume 1190, Page 712 of the Official Records of Hays County, Texas (as the same may have heretofore been amended, the "Deed of Trust"), does hereby join in the execution of this Conservation and Public Utility Easement for the limited purpose of confirming Mortgagee's agreement that (a) the execution by Developer of this Conservation and Public Utility Easement will not constitute a default under the Deed of Trust, or any of the other collateral documents evidencing or securing the indebtedness secured by the Deed of Trust (collectively, the Deed of Trust and such other documents, if any, are referred to herein as the "Security Documents"), and (b) the liens, security interests, assignments and/or other encumbrances effectuated by the Security Documents shall, as to any interest in real property covered by the Security Documents and now or hereinafter considered to be a part of the Property as defined in this Conservation and Public Utility Easement, in all things be subordinate and inferior to the easement, rights and privileges granted by Conservation and Public Utility Easement and the terms, provisions, covenants and conditions set forth herein.

HARTLAND BANK, N.A.

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of HARTLAND BANK, N.A., a national banking association, on behalf of said national banking association.

(SEAL)

Notary Public, State of Texas

After recording return to:

City of Hays, Texas
P. O. Box 1285,
Buda, Texas 78610-1285

Exhibit "F"
SANITARY CONTROL RESTRICTIVE COVENANT
AND EASEMENT

DATE: ____ day of _____, _____

GRANTOR: **Jim C. Elliott and Dalton G. Elliott,**
Independent Co-Executors of the Estate of Roy C. Elliott, Deceased

GRANTOR'S MAILING ADDRESS: **4105 Medical Parkway,**
Austin, Travis County, TX 78756

GRANTEE: **The City of Hays, Texas**

GRANTEE'S MAILING ADDRESS (including County): **P.O. Box 1285,**
Buda, Hays County, Tx 78610

LIENHOLDER: **Hartland Bank, N.A.**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: All of that area within a 150 foot radius of the water well located _____ feet at a radial of _____ degrees from the corner of lot _____ shown and set forth on the plat of ELLIOTT RANCH, PHASE _____, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume _____, Pages _____ on the Plat Records of Hays County, Texas.

RESTRICTIONS AND USES:

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development Agreement for Elliott Ranch Subdivision dated February ____, 1999, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, declares that the Property be held, transferred, sold and conveyed subject to the following restrictions and negative easement for the benefit of GRANTEE, its successors and assigns:

GRANTOR, their successors, assigns, designees and agents, hereby covenant and agree to the following restrictions and uses of easement:

1. The construction and operation of underground petroleum and chemical storage tanks and liquid transmission pipelines, stock pens, feedlots, dump grounds, privies, cesspools,

septic tank or sewage treatment drainfields, improperly constructed water wells of any depth, and all other construction or operation that could create an unsanitary condition within, upon, or across the property subject to this easement are prohibited within this easement. For the purpose of the easement, improperly constructed water wells are those wells which do not meet the surface and subsurface construction standards for a public water supply well.

2. The construction of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, and cemeteries is specifically prohibited within a 150-foot radius of the water well described and located below.

3. This easement permits the construction of homes or buildings upon the Grantor's property as long as all items in Restrictions Nos. 1 and 2 are recognized and followed.

4. This easement permits normal farming and ranching operations, except that livestock shall not be allowed within 150 feet of the water well.

TERM: This easement shall run with the land and shall be binding on all parties and persons claiming under the Grantor for a period of two years from the date that this easement is recorded; after which time, this easement shall be automatically extended until the use of the subject water well as a source of water for public water systems ceases.

ENFORCEMENT:

Enforcement of this easement shall be proceedings at law or in equity against any person or persons violating or attempting to violate the restrictions in this easement, either to restrain the violation or to recover damages.

INVALIDATION:

Invalidation of any one of these restrictions or uses (covenants) by a judgment or court order shall not affect any of the other provisions of this easement, which shall remain in full force and effect.

The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the PROPERTY, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property as of the date this Sanitary Control Restrictive Covenant and Easement becomes effective as to portions of the PROPERTY as provided herein and not inconsistent with the Development Agreement dated February ____, 1999.

TO HAVE AND TO HOLD the above-described easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE's successors and assigns forever; and GRANTOR does hereby bind themselves, their heirs, executors, administrators, grantees, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easement unto GRANTEE, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

When the context requires, singular nouns and pronouns include the plural.

**Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the
Estate of Roy. C. Elliott, Deceased**

Date: _____, _____

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: _____, _____

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Accepted and Approved:

City of Hays, Texas

William Couch, Mayor

Date: _____, _____

**STATE OF TEXAS §
 §
COUNTY OF _____ §**

This instrument was acknowledged before me on the ___ day of _____, _____, by Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

1509 072

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, _____, by Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

Exhibit "G"
Conveyance of Water Rights

SPECIAL WARRANTY DEED
[CONVEYANCE OF WATER RIGHTS]

THE STATE OF TEXAS §

COUNTY OF HAYS § KNOW ALL PERSONS BY THESE PRESENTS:

That **Jim C. Elliott and Dalton G. Elliott, Independent Co-Executors of the Estate of Roy C. Elliott, Deceased**, hereinafter called "**Grantor**," for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), together with other good and valuable consideration, to Grantor cash in hand paid by the **City of Hays, Texas**, a Texas municipal corporation, hereinafter called "**Grantee**", the receipt of which is hereby acknowledged, has **GRANTED, SOLD and CONVEYED**, and by these presents does **GRANT, SELL and CONVEY** unto the said the **City of Hays**, all the ground water rights, water rights and water running upon, in, to or under the following described tract or parcel of land, to-wit:

547 acres, more or less, out of the Sinclair D. Gervais Survey No. 8, Abstract No. 7, in Hays County, Texas, and being more particularly described in a deed, to Roy C. Elliott, of record in Volume 135, Page 199, of the Deed Records of Hays County, Texas.

In addition to all other rights and property conveyed herein, Grantor expressly conveys all rights to, or associated with, the Edwards Aquifer, the Glen Rose Aquifer and the Trinity Aquifer underground water or the Edwards Aquifer, the Glen Rose Aquifer and the Trinity Aquifer underground water reservoirs under the Property, specifically including, but not by way of limitation, all groundwater and rights thereto or associated therewith relating to water in the Edwards Aquifer, the Glen Rose Aquifer and the Trinity Aquifer, and any rights or claims of Grantor thereto as defined, anticipated or permitted under S.B. No. 988, 70th Texas Legislature, in conjunction with Chapt. 52, as amended by Chapt. 36, Tex. Water Code.

This conveyance of water rights shall be subject to the following exceptions and reservations, and none other: Item # 1. The owner of a lot in Phase 1 of the Elliott Ranch Subdivision may install a properly permitted private well on the lot prior to the date the Grantee's public water system is functioning and available to such lot and, in such event, shall be entitled to use ground water from such well for household and irrigation purposes on the lot on which the well is located; provided that beginning eighteen (18) months after such a public water system is functioning and available to a boundary of such owner's lot such owner and well shall be permitted to use ground water from such well solely for the irrigation of plants and vegetation located on the lot on which such permitted well

is located. No water rights whatsoever are reserved or shall be available for any well that is not permitted, drilled and producing prior to Grantee making water service available to Phase 1 of Elliott Ranch Subdivision. Item # 2. If Grantor shall finally abandon or discontinue the development of the Elliott Ranch Subdivision prior to the completion thereof, Grantee shall reconvey to Grantor a portion of the above described water rights as follows: Grantee shall reconvey the water rights to Grantor only for the land contained within any proposed Phase of the Subdivision, as such phases are shown on the Preliminary Plat of the Subdivision approved by Grantee, for which a final plat has not been approved by Grantee; provided that Grantee shall not reconvey the water rights for any such phase or section if Grantor has installed a well in such phase or section pursuant to the Development Agreement for the Elliott Ranch Subdivision.

TO HAVE AND TO HOLD the above described water rights and groundwater, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, the **City of Hays, Texas**, its successors and assigns forever, and Grantor does hereby bind its successors and assigns to **WARRANT AND FOREVER DEFEND**, all and singular, the said water and water rights unto the **City of Hays, Texas**, the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same by through or under the Grantor, but no further.

EXECUTED at _____, _____ County, Texas, this the ___ day of _____ 1999.

**Jim C. Elliott and Dalton G. Elliott,
Independent Co-Executors of the Estate
of Roy. C. Elliott, Deceased**

Date: _____, _____

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: _____, _____

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, _____, by Jim C. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, _____, by Dalton G. Elliott, Independent Co-Executor of the Estate of Roy C. Elliott, Deceased.

(SEAL)

Notary Public, State of Texas

JOINDER OF MORTGAGEE

The undersigned ("Mortgagee"), being the present legal and equitable owner and holder of a deed of trust lien against the real property on which the Property (as defined above) is located pursuant to that certain Deed of Trust dated October 19, 1995, executed by Jim C. Elliott and Dalton G. Elliott, as Independent Co-Executors of the Estate of Roy C. Elliott, Deceased ("GRANTOR") and recorded in Volume 1190, Page 712 of the Official Records of Hays County, Texas (as the same may have heretofore been amended, the "Deed of Trust"), does hereby join in the execution of this Special Warranty Deed [Conveyance of Water Rights] for the limited purpose of confirming Mortgagee's agreement that (a) the execution by Developer of this Special Warranty Deed [Conveyance of Water Rights] will not constitute a default under the Deed of Trust, or any of the other collateral documents evidencing or securing the indebtedness secured by the Deed of Trust (collectively, the Deed of Trust and such other documents, if any, are referred to herein as the "Security Documents"), and (b) the liens, security interests, assignments and/or other encumbrances effectuated by the Security Documents shall, as to any interest in real property covered by the Security Documents and now or hereinafter considered to be a part of the Property as defined in this Special Warranty Deed [Conveyance of Water Rights], in all things be subordinate and inferior to the easement, rights and privileges granted by this Special Warranty Deed [Conveyance of Water Rights] and the terms, provisions, covenants and conditions set forth herein.

HARTLAND BANK, N.A.

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of HARTLAND BANK, N.A., a national banking association, on behalf of said national banking association.

(SEAL)

Notary Public, State of Texas

After recording return to:

City of Hays, Texas
P. O. Box 1285,
Buda, Texas 78610-1285

Exhibit "H"
Variances Granted
Elliott Ranch Subdivision

1. Requirement to locate trees having a circumference of 30 inches or more (Section 7.E.8.C)
2. Requirement to depict location of 25-year flood plain (Section 7.E.9.B)
3. Requirement to provide detention (Section 11.J.3.B)
4. Requirement to provide detention/sedimentation basins (Section 11.L.2.A)
5. Requirement to provide soil core tests every two acres (Section 11.G.4)
6. Requirement to place all utilities underground (Section 11.D.1)
7. Requirement to limit block length to 2000 feet (Section 11.M)
8. Requirement to construct sidewalks (Section 11.E)
9. Requirement to construct ribbon curbs (Section 11.B.13)
10. Requirement to dedicate parkland to City (Section 13) as result of payment of \$100 per lot in lieu of dedication as provided in Development Agreement.
11. Requirement that each lot front on a public street (Section 11.O.3). Private streets have been approved.
12. The preliminary plat shall be and remain in effect and shall not expire during the term of this Agreement, as provided in and subject to the terms, provisions and conditions of Section 1.03 of the Development Agreement for the Elliott Ranch Subdivision.
13. An extension of time for the approval of final plats of the Property has been granted as set forth in Section 2.08 of the Development Agreement for the Elliott Ranch Subdivision.

Exhibit "I"
Description of the Water System - The Project

The Project shall consist of the following on-site water system improvements to be constructed in phases:

1. Water wells, designed, constructed and certified by a registered professional engineer, sufficient to supply at least 1.0 gpm per connection for each lot in each phase or section of the Subdivision. If the existing water wells are not sufficient to provide at least 1.0 gpm per connection for all lots that have been finally platted and for all lots within a subsequent phase or section proposed to be finally platted, an additional well or wells shall be required for such subsequent phase or section sufficient to provide such minimum water supply. The engineer's certification shall include a statement that the wells shall have not more than a 60 percent decline in production capacity during the recurrence of the drought of record.
2. The location of the water wells shall be pre-approved by the City of Hays.
3. A minimum of two (2) Edwards Aquifer wells shall be provided.
4. The maximum number of wells required to service the Subdivision shall not exceed four (4) Edwards Aquifer wells, subject to the provisions of paragraph 1 above.
5. High service pumps and piping shall be designed and initially constructed to meet or exceed the following criteria:
 - (a) 2 gpm per connection with the largest pump out of service
 - (b) a minimum of two (2) pumps
 - (c) a maximum of four (4) pumps
 - (d) a combined pumping capacity of all pumps of at least 500 gpm to meet fire flow requirements
6. A ground storage tank shall be designed and initially constructed at a minimum capacity of 60,000 gallons. This will provide a 2-hour - 500 gpm capacity for fire flow purposes. In addition, the ground storage tank shall be designed and constructed so that it can be doubled in capacity by adding additional vertical rings.
7. A pressure tank, including air compressor and appurtenances, shall have an initial minimum capacity of 20 gallons per connection or a total of 4,260 gallons for the entire Subdivision.

8. The water distribution system shall be sized to provide a minimum of 2.0 gallons per minute per connection for peak hour usage or a total of 500 gpm, whichever is greater. The minimum diameter of water transmission and lateral mains shall be 6-inches. All mains shall be looped, provided that lateral mains may extend up to 600-feet in length without being looped. Clow fire hydrants shall be installed at intervals such that no front lot shall be more than 500-feet from the nearest hydrant. All dead-end lateral lines shall have a minimum of 2-inch flush valve with box.
9. A minimum 10-inch diameter water transmission main shall be installed at the following internal subdivision locations as such portions of the Subdivision are developed:
- (a) Between the ground storage/pump station to the entrance of the Subdivision at Elliott Ranch Road.
 - (b) Between the ground storage/pump station to the southern end of North Mourning Dove Lane at Oak Grove Road.
10. All on-site water system improvements shall be constructed to meet or exceed the minimum standards, unless as modified above, of the City of Hays, the TNRCC and the Barton Springs Edwards Aquifer Conservation District, whichever is most restrictive.
11. Developer shall obtain and file, and pay all costs and expenses for, a hydrogeologic report and any required amendments thereto for the Property, meeting the requirements of the Barton Springs/Edwards Aquifer Conservation District ("BS/EACD") and the City, pertaining to developing on-site ground water resources as a public drinking water supply. The report shall be submitted to the BS/EACD and the City for review and approval.
12. With regard to the Project and public drinking water improvements, Developer agrees to meet or exceed the minimum criteria of the TNRCC and the criteria set forth in this Exhibit "I", whichever is more stringent. City and Developer acknowledge that current TNRCC criteria and regulations require an on-site auxiliary power supply when the water system serves 250 or more customers. Developer shall never-the-less provide an auxiliary power supply for the above referenced motors and pumps as required by TNRCC criteria and regulations if required as a result of the 213 connections. Developer shall not be required to provide such auxiliary power supply if such requirement is imposed or results from City connecting customers outside the Subdivision to the Project.
13. Developer shall provide an initial water supply and high service pumping capacity to supply Phase I and Phase II, as provided in this Exhibit "I". Although not required, Developer shall set a goal to provide well capacity and water pressurization facilities as part of the Phase II development that are capable of serving all lots in both Phase III and Phase IV.
14. Developer shall pay and reimburse to City the actual costs and expenses incurred by City for the inspection of the construction and installation of the Project. Such payments and reimbursements shall not exceed three and one-half percent (3.5%) of the construction costs of the Project. Developer shall make such payments and reimbursements to the City monthly in arrears, based upon the actual invoices to City for such inspection services.

EXHIBIT "J"
SOLID WASTE DISPOSAL AGREEMENT FOR
THE ELLIOTT RANCH SUBDIVISION

THIS AGREEMENT for services made and entered into effective the ____ day of _____, 1999, by and between the **City of Hays, Texas**, a municipal corporation (herein the "City"), and **Jim C. Elliott and Dalton G. Elliott, Independent Co-Executors of the Estate of Roy C. Elliott, Deceased** (herein the "Developer"), both of whom agree and understand as follows:

WITNESSETH:

WHEREAS, the Developer recognizes the need for coordinated solid waste disposal services to provide adequate disposal services to the Subdivision on a dependable basis; and

WHEREAS, the City has a recognized public need to assure appropriate and adequate solid waste disposal within the City limits and the extraterritorial jurisdiction of the City;

NOW, THEREFORE, DEVELOPER, their successors and assigns for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development Agreement for Elliott Ranch Subdivision (the "Subdivision") dated February ____, 1999, between DEVELOPER and CITY, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby contracts, covenants and agrees with the CITY, its successors and assigns, that:

Section 1. Services. The City shall provide or cause to be provided solid waste disposal services to the Subdivision. City shall have the right to charge and assess fees pursuant to City Ordinances and/or contracts governing the provision of solid waste disposal services and to manage and maintain such services in compliance with its Ordinances and contracts. Developer agrees and does hereby contract with the City to obtain and, by restrictive covenants, to require his successors, assigns and grantees within the Subdivision, to obtain solid waste disposal services directly from the City, or a provider that provides such services pursuant to a contract with the City, during the term of this agreement.

Section 2. Term. The initial term of this agreement shall be for eight and one-half (8.5) years. After the initial term, this agreement shall be automatically renewed for successive one year terms, unless terminated in writing by Developer or the City. The City may terminate this agreement at any time with sixty (60) days notice to Developer, his successor or assigns.

Section 3. Annexation. In the event of annexation of the Subdivision by the City, this Agreement shall terminate and the City shall have the exclusive, continuing right and authority to provide solid waste services to the Subdivision, in accordance with the City's ordinances and the applicable laws, rules and regulations of the State of Texas.

Section 4. Default. This Section 4 shall be applicable solely to Developer and the City. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this agreement.

Section 5. Performance. The solid waste services shall be provided one day each week at a level of quality that is at least equivalent to that provided in other cities within Hays County, Texas. In the event that the quality or frequency of solid waste collection services provided within the Subdivision are not at least equivalent to such standard and Developer shall be or become dissatisfied at anytime prior to the annexation of the Subdivision by the City, Developer shall notify the City and endeavor with the City to resolve all related issues within 30 days. If the quality or frequency of the solid waste services are not thereafter provided at the required level of service, Developer may give the City notice of default. Thereafter, if the level of services are not, within 30 days, provided at a level of quality and frequency at least equivalent to that provided in other cities within Hays County, Texas, Developer may require the City to obtain another solid waste services provider to provide such services within the Subdivision.

Section 6. Collections By City. The City shall be entitled to collect fees and charges from the owners of lots within the Subdivision, for solid waste collection services within the Subdivision and to enforce the payment of such fees and charges by any means available pursuant to Texas law, including, but not limited to, disconnecting water service after notice and opportunity for payment. The fees and charges for solid waste service within the Subdivision shall be the same as for residents within the corporate limits of the City; provided that an appropriate surcharge may be charged to customers within the Subdivision until such time as the density of occupancy within the Subdivision will permit service within the Subdivision on a cost comparative basis with that provided within the City; and provided further that, in the event of a dispute as to the amount of any such surcharge, the amount of the surcharge shall not exceed the difference between the standard in-city rate, then being charged by the City, and the rate proposed to be charged by a licensed solid waste services provider (having contract performance credentials comparative to those of the City's contract provider) for equal or better services in the Subdivision for a term of three (3) years or more.

Section 7. Force Majeure. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning; earthquakes; fires; hurricanes, storms and floods; washouts; droughts; adverse weather conditions; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents; or other causes not reasonably within the control of the party claiming such inability.

If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the

continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Section 8. Notices. Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed delivered when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed to:

City of Hays
Attn: Mayor
P. O. Box 1285
Buda, Texas 78610-1285

with copy to:
Barney L. Knight
Barney L. Knight & Associates
223 West Anderson Lane, Suite A105
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed to:

Jim Elliott
4105 Medical Parkway
Austin, Texas 78756

with copy to:
R. Alan Haywood
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Section 9. Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between parties hereto, and may not be amended except by a writing signed by all parties and dated subsequent to the date hereof.

Section 10. Effective Date. This Agreement shall be effective upon execution by all parties hereto.

Section 11. Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

EXECUTED in multiple originals on the dates opposite the signatures below.

City of Hays, Texas

Date: February ____, 1999

William Couch, Mayor

Developer:

Date: February ____, 1999

Jim C. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

Date: February ____, 1999

Dalton G. Elliott, Independent Co-Executor
of the Estate of Roy C. Elliott, Deceased

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Lee Carlisle

3-5-99 08:54 AM 9904984
KLEEN \$175.00
LEE CARLISLE, County Clerk
HAYS COUNTY