

DECLARATION OF  
PROTECTIVE COVENANTS  
OF CREEK ROAD RANCH

Declarant: Creek Road Ranch, Inc.

Date: August 5, 2002

---

Declaration of Protective Covenants  
for Creek Road Ranch

TABLE OF CONTENTS

I. DEFINITIONS

1.1 Definitions

- (1) Assessment
- (2) Association
- (3) Association Documents
- (4) Board
- (5) Builder
- (6) Common Area
- (7) Declarant
- (8) Declaration
- (9) Design Guidelines
- (10) Design Professional
- (11) DRC
- (12) Dwelling Unit
- (13) Improvement
- (14) Landscaping
- (15) Inclusive Building Area
- (16) Lot
- (17) Member or Members
- (18) Mortgage
- (19) Mortgagee
- (20) Owner
- (21) Pasture Area
- (22) Plans and Specifications
- (23) Plat
- (24) Public View
- (25) Restoration
- (26) Scenic Buffer Easement
- (27) Street
- (28) Visible Location
- (29) Wildlife Management Plann

1.2 Other Terms

II. HOMEOWNERS ASSOCIATION

2.1 Organization

2.2 Membership

2.3 Voting Rights

- (1) Class A Members
- (2) Class B Member
- (3) Suspension

2.4 Authority of Association

- (1) Rules and Bylaws
- (2) Assessments

- (3) Right of Entry and Enforcement
- (4) Common Area
- (5) Manager
- (6) Other Property or Amenities
- (7) In General
- 2.5 Duties of Association
  - (1) Common Area and License Areas
  - (2) Taxes
  - (3) Insurance
  - (4) Books and Records
  - (5) In General
- 2.6 Indemnity

### III. ASSESSMENTS

- 3.1 In General
- 3.2 Regular Assessments
- 3.3 Special Assessments
- 3.4 Compliance Assessments
- 3.5 Subsidy
- 3.6 Transfer Fee; Status Certificates
- 3.7 Late Fees; Interest
- 3.8 Personal Obligation; Secured by Lien
- 3.9 Assessment Lien

### IV. COMMON AREAS

- 4.1 Conveyance of Common Area
- 4.2 Extent of Easements
  - (1) Rules and Regulations
  - (2) Conveyance
  - (3) Mortgages
  - (4) Protection
  - (5) Suspension of Rights
  - (6) Declarant's Rights
- 4.3 Condemnation
- 4.4 Use, Occupancy or Improvement

### V. REPAIR AND MAINTENANCE; CASUALTY

- 5.1 Owner's Obligation
- 5.2 Casualty Damage

### VI. EASEMENTS

- 6.1 In Common Area
- 6.2 Right of Entry
- 6.3 Utility Easements
- 6.4 Drainage Easements
- 6.5 Temporary Completion Easement

- 6.6 Scenic Buffer Easement
- 6.7 Fence and Landscaping Easements
- 6.8 Delegation

VII. USE AND OCCUPANCY

- 7.1 Residential Use
- 7.2 Incidental Uses
- 7.3 Leases

VIII. GENERAL RESTRICTIONS

- 8.1 Hazardous Activities; Noise and Nuisance
- 8.2 Temporary Structures; Manufactured Housing; Mobile Homes
- 8.3 Signs
- 8.4 Vehicles
- 8.5 Household Pets
- 8.6 Livestock
- 8.7 Wildlife Management
- 8.8 Garbage and Refuse Disposal
- 8.9 Parking
- 8.10 Unsightly Articles
- 8.11 Mining and Drilling; Storage Tanks
- 8.12 Security
- 8.13 Burning
- 8.14 Utilities
- 8.15 Exterior Holiday Decorations
- 8.16 Firearms; Hunting
- 8.17 Antennae, Broadcast Equipment and Devices
- 8.18 Division and Consolidation
- 8.19 Construction Activities
- 8.20 Completion of Construction
- 8.21 Pasture Areas

IX. DESIGN REVIEW

- 9.1 Review by DRC
- 9.2 Goals
- 9.3 DRC Composition and Appointment
- 9.4 Term
- 9.5 Conflicts of Interest
- 9.6 Adoption of Rules
- 9.7 Action of the DRC
- 9.8 Submission Requirements
- 9.9 Approval of Builders and Design Professionals
- 9.10 Limits of Approval
- 9.11 Owner's Burden to Comply
- 9.12 Expiration of Approvals
- 9.13 Variances
- 9.14 Review of Work in Progress

- 9.15 No Waiver
- 9.16 Address
- 9.17 Fees

X. ANNEXATION AND WITHDRAWAL OF LAND

- 10.1 Staged Project; Annexation of Land
- 10.2 Withdrawal of Land

XI MISCELLANEOUS

- 11.1 Enforcement
- 11.2 Exemption of Declarant
- 11.3 Term
- 11.4 Amendment
- 11.5 Exculpation of DRC and Board Members
- 11.6 Interpretation
- 11.7 Construction
- 11.8 Assignment
- 11.9 Notices
- 11.10 Imposition of Fines
- 11.11 Dispute Resolution

DECLARATION  
OF PROTECTIVE COVENANTS  
FOR CREEK ROAD RANCH

---

THIS DECLARATION OF PROTECTIVE COVENANTS (this “Declaration”) is made on the date hereinafter set forth by CREEK ROAD RANCH, INC., a Texas corporation (the “Declarant”).

WITNESSETH

WHEREAS, Declarant owns certain real property in Hays County, Texas, described as Creek Road Ranch, Section 1, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 10, Pages 300-301, Plat Records of Hays County, Texas (said subdivision, together with such other land as may be annexed in accordance with the provisions hereof, the “Property”); and

WHEREAS, Declarant desires to create on the Property a planned community known as “Creek Road Ranch”;

NOW THEREFORE, Declarant declares (i) that the Property will be held, sold, conveyed and occupied subject to the liens, easements, restrictions, covenants and conditions declared below, which will be deemed to be covenants running with the Property, shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each such party; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following liens, easements, covenants, conditions and restrictions regardless of whether or not the same are set forth or referred to in said contract or deed.

ARTICLE I  
DEFINITIONS

Section 1.1 Definitions. When used herein and not otherwise defined herein, the following terms shall have the following meanings:

- (1) “Assessment” will mean any assessments that are or may be levied by the Association under the terms and provisions of this Declaration.
- (2) “Association” will mean Creek Road Ranch Homeowners Association, Inc., a Texas nonprofit corporation.
- (3) “Association Documents” will mean the Articles of Incorporation, Bylaws, and rules and regulations of the Association, as amended from time to time.
- (4) “Board” will mean the Board of Directors of the Association.
- (5) “Builder” will mean any party or entity (including a general contractor) who or which builds or constructs any Improvements on a Lot.
- (6) “Common Area” will mean either a fee simple or an easement interest in any land within or benefitting any portion of the Property, which is designated by Declarant, in Declarant’s sole discretion, as Common Area, and thereafter is maintained and operated by Declarant or the Association for the benefit of the Property, including, but not limited to, easements, entry

monuments and improvements, roadways, rights-of-way, medians, sidewalks, parks, paths, trails, recreational facilities, water quality, drainage and/or detention areas, and creeks, streams, ponds and lakes.

- (7) **"Declarant"** will mean Creek Road Ranch, Inc., a Texas corporation, or its successors or assigns. Any assignment of Declarant's rights 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 the Declarant.
- (8) **"Declaration"** will mean this instrument, as from time to time amended.
- (9) **"Design Guidelines"** will mean a written set of guidelines promulgated by Declarant and/or the DRC which will govern the construction of all improvements on the Property.
- (10) **"Design Professional"** will mean a person or entity qualified as a Design Professional under the standards set forth in the Design Guidelines, and who or which designs any Improvements.
- (11) **"DRC"** will mean the committee created under this Declaration to review and approve Plans and Specifications.
- (12) **"Dwelling Unit"** will mean the primary residential structure situated upon a Lot.
- (13) **"Improvement"** will mean every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis or sport courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, Landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.
- (14) **"Landscaping"** will mean any proposed modification to land, including but not limited to any clearing, berms, dam, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.
- (15) **"Inclusive Building Area"** will mean the areas of a Lot within which the Dwelling Unit, and any accessory buildings, and courtyards are to be constructed. The Inclusive Building Area for each Lot within the initial Property either is so designated on **Exhibit A** attached hereto or is shown on the Plat. As additional land is annexed within the Property, the Inclusive Building Area for each Lot therein shall be designated by Plat or by exhibit attached to the instrument effecting the annexation.
- (16) **"Lot"** will mean any parcel of land indicated as a subdivided lot upon a Plat, except that lots so shown which are dedicated or conveyed to the Association as Common Areas or lots dedicated or conveyed to a governmental authority or utility shall not be deemed a "Lot" for purposes of this Declaration.
- (17) **"Member"** or **"Members"** will mean any person holding membership rights in the Association.
- (18) **"Mortgage"** will mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.
- (19) **"Mortgagee"** will mean the holder or holders of any Mortgage.
- (20) **"Owner"** will mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
- (21) **"Pasture Area"** will mean a portion of a Lot within which livestock may be kept in compliance with the provisions of this Declaration. The Pasture Area (if any) for each Lot within the initial Property is designated on **Exhibit A** or on the Plat for such land. As additional land is annexed within the Property, the Pasture Area for each Lot therein shall be designated by the Plat or by exhibit attached to the instrument effecting the annexation.
- (22) **"Plans and Specifications"** will mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to, those documents required by the Design Guidelines, and 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 (including roof color), plans for utility services, and all other documentation or information relevant to such Improvement. The Plans and Specifications shall locate by scaled drawings all Pasture Areas, Scenic Buffer Easement areas, fences, sidewalks, driveways, utility lines and other Improvements.
- (23) "**Plat**" will mean a subdivision plat of any portion of the Property recorded in the Official Public Records of Hays County, Texas.
- (24) "**Public View**" will mean, as to each Lot, visibility of a location on the Lot from a Street, Common Area or another Lot.
- (25) "**Restrictions**" will mean this Declaration (including all amendments thereto), together with the Association Documents, the Design Guidelines, and any rules or regulations promulgated by the DRC.
- (26) "**Scenic Buffer Easement**" shall mean the easements (if any) on each Lot so designated in, and created by, this Declaration, which require that the area within such easement be maintained in its natural state. The Scenic Buffer Easements for each Lot within the initial Property are so designated on Exhibit A. As additional land is annexed within the Property, the Scenic Buffer Easements for each Lot therein shall be designated by exhibit attached to the instrument effecting the annexation.
- (27) "**Street**" will mean a road or right-of-way that has been or is intended to be dedicated for use by the public.
- (28) "**Visible Location**" will mean a location on a Lot or Common Area which is in Public View.
- (29) "**Wildlife Management Plan**" will mean such permits, licenses, rules, regulations, requirements, and other obligations which may now exist or hereafter arise or be promulgated by the Association or any governmental entity with regard to the use, maintenance, limits or requirements for maintaining the Property as a managed wildlife preserve.

**Section 1.2 Other Terms.** Terms not defined above shall have the meanings otherwise specified herein, or if not so specified, their common meanings when used in the context of land use and development. The word "including," as used herein, indicates non-exclusive examples of the matters or items following such word. All terms and words, whether defined herein, shall be interpreted so as to allow the greatest oversight and control anticipated in the preamble above.

## ARTICLE II HOMEOWNERS ASSOCIATION

**Section 2.1 Organization.** The Association shall be formed as a Texas non-profit corporation, created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in the Association Documents or in this Declaration. No Association Document shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**Section 2.2 Membership.** Any person (including Declarant), upon becoming an Owner automatically shall be a Member of the Association. Membership will be appurtenant to ownership of a Lot, and may not be severed, transferred, pledged, mortgaged, or alienated except along with the title to the Lot.

**Section 2.3 Voting Rights.** The right to cast votes, and the number of votes which may be cast, on all other matters to be voted on by the Members shall be calculated as follows:

- (1) **Class A Members.** Each Owner, including Declarant, of a Lot within the Property shall have one (1) vote for each Lot owned. If any Owners own their Lot jointly or in common, those



Owners must designate a single person to cast the vote for the jointly owned Lot. A designation must be in writing and filed with the Board before any such vote may be cast, and if such Owners do not file a designation, the vote for such Lot shall not be cast or counted for any purpose whatsoever. Once a designation has been filed with the Board, no other person may vote on behalf of such Lot until a written revocation has been filed with the Board.

- (2) **Class B Member.** In addition to the votes to which it is entitled under Subsection 2.3(1) above, Declarant shall have five (5) votes for each Lot within the Property until Declarant no longer owns any Lots. If Declarant loses the right to additional votes under this Section 2.3(2) by conveying away all Lots owned by Declarant, Declarant may subsequently regain the right to additional votes hereunder by an annexation under the terms of Article 10 below. Declarant shall remain a Class B Member during the period described below notwithstanding any other provision of this Declaration. Upon and after an annexation of land owned by Declarant, Declarant shall have additional votes under this Section 2.3(2) until Declarant again no longer owns any portion of the Property (as increased). The Class B membership will continue to exist (and Declarant shall remain a Class B Member) until one (1) year has passed during which Declarant owns no portion of the Property (*e.g.*, if Declarant annexes additional land during that one-year period, Declarant will remain a Class B Member, and a future conveyance of all the Property owned by Declarant will begin a new one-year period).
- (3) **Suspension.** The Board may suspend an Owner's right to vote during any period during which the Owner is delinquent in the payment of any Assessment or is otherwise in default under the Restrictions.

**Section 2.4 Authority of Association.** The Association shall have all powers of a Texas non-profit corporation, subject only to any express limitation upon the exercise of such powers set forth in this Declaration. The Association also shall have the express power to do and perform all acts necessary or proper for or incidental to the exercise of any powers granted to it by law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, shall have the power and authority at all times:

- (1) **Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, the Association Documents. The Board may establish the content of the Association Documents, but said Documents shall not conflict with this Declaration.
- (2) **Assessments.** To levy Assessments as provided below.
- (3) **Right of Entry and Enforcement.** To enter upon any Lot at any time in an emergency, or after ten (10) days' notice in a non-emergency, without being liable to any Owner or occupant, in order to enforce the Restrictions or to cause any Common Area or Improvement to conform to the Restrictions. The Association may levy a Compliance Assessment against such Owner and Lot in order to reimburse the Association for expenses incurred by the Association in connection with such an entry and the work so conducted. The Association may begin and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association also may settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions (but the Board shall not have the power to expend Association funds in order to bring suit against Declarant, its successors or assigns). Each Owner shall indemnify and hold harmless Declarant and the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.4(3) (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith). This indemnity shall not include acts or activities of the Association which constitute gross negligence or wilful misconduct. "Gross negligence" as used herein does

not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (4) **Common Area.** To own and/or improve any Common Area or Improvements thereon, and to grant and convey interests in same to any person, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, in order to build, erect, operate, or maintain:
- (i) roads, streets, walks, driveways, parking lots, trails, park improvements, and paths;
  - (ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
  - (iii) sewers, water systems, storm water drainage systems, dams, sprinkler systems, and pipelines; or
  - (iv) any other Improvements or facilities which the Board determines will benefit the Owners generally.

This subsection (3) shall not permit the use or occupancy of any Improvement in a way which would violate other provisions of this Declaration. The Association also may own personal property used in connection with the Common Area and Improvements located thereon.

- (5) **Manager.** To retain and pay for the services of a manager to manage and operate the Association, including management of the Common Area, as deemed advisable by the Board. Personnel for management and operation purposes may be employed directly by the Association or furnished by the manager. The Board may delegate its duties, powers, and functions to the manager to the extent permitted by law. The Owners hereby release the Association and the Board from liability for any omission or improper exercise by the manager of any duty, power, or function so delegated.
- (6) **Other Property or Amenities.** To acquire, pay for, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise; to obtain and pay for any services which the Board deems appropriate, and to pay any taxes or assessments which the Association must pay pursuant to applicable law or with respect to the Common Area.
- (7) **In General.** To do all things reasonably necessary in order to perform the duties of the Association set forth in the Restrictions.

**Section 2.5 Duties of Association.** Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties:

- (1) **Common Area and License Areas.** Accept, own and maintain in good condition and repair the Common Area, all Improvements thereon, all appurtenances thereto, and all personal property used in connection with same.
- (2) **Taxes.** Pay all taxes and assessments levied upon or with respect to the Common Area (to the extent not levied directly upon the Members). The Association may contest the legality and the amount of such taxes and assessments.
- (3) **Insurance.** Obtain and maintain in effect policies of insurance which the Board considers reasonably necessary or appropriate to carry out the Association's functions.
- (4) **Books and Records.** 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 Owners and Mortgagees upon request during normal business hours.
- (5) **In General.** Carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

**Section 2.6 Indemnity.** As more particularly provided in the Bylaws, the Association shall indemnify (and carry appropriate insurance supporting the indemnity) 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, to the full extent permitted from time to time by the Texas Non-Profit Corporation Act.

### ARTICLE III ASSESSMENTS

**Section 3.1 In General.** By acceptance of a deed to any Lot (and regardless of whether expressly so stated in such deed), the Owner of the Lot agrees to pay to the Association: (i) Regular Assessments, (ii) Special Assessments, and (iii) Compliance Assessments, all as described and defined below. The Board shall establish an operating fund into which shall be deposited all funds paid to the Association and from which disbursements shall be made in performing the Association's duties under this Declaration. The Association's funds may be used only for purposes authorized by this Declaration, as it may from time to time be amended. Regular Assessments and Special Assessments shall be levied on a uniform basis against each Lot within the Property, whether or not improved; provided, however, that no Regular or Special Assessments shall be levied against Lots owned by Declarant. If multiple Lots are consolidated into one Lot for any reason (unless the consolidation is done by Declarant), the Owner of the consolidated Lots shall pay Assessments as if no consolidation had occurred (so that if two Lots are combined into one, the Owner shall pay Assessments for two Lots). If and when additional Lots are annexed into the Property, the Owners of such annexed Lots must pay Assessments effective the date of annexation. If an obligation to pay an Assessment arises after January 1 of the year for which the Assessment was levied, such Assessment shall be prorated as of the date when the obligation to pay first arose in proportion to the portion of the year remaining after said date.

**Section 3.2 Regular Assessments.** Promptly after the Association is formed, and thereafter before each following January 1, the Board shall estimate the Association's expenses during the coming fiscal year in performing its functions under the Restrictions, including but not limited to duties required and activities authorized herein of the Association, the Board, and the DRC, plus a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. An Assessment sufficient to pay such estimated net expenses (a "Regular Assessment") shall then be levied as herein provided. The amount of the Regular Assessment set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Regular Assessment, the Association may at any time and from time to time levy further Regular Assessments in the same manner. Regular Assessments shall be due and payable to the Association in such manner as the Board may select in its sole and absolute discretion (*e.g.*, annually, monthly or other).

**Section 3.3 Special Assessments.** In addition to the Regular Assessments, the Board may levy special assessments ("Special Assessments") whenever in the Board's opinion Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessment shall be at the reasonable discretion of the Board.

**Section 3.4 Compliance Assessments.** The Board may levy a Compliance Assessment against any Lot as reimbursement for costs (including attorney's fees) incurred by the Association or the DRC as authorized and provided herein, or in otherwise enforcing this Declaration.

**Section 3.5 Subsidy.** If Declarant elects to fund any deficiency in an Assessment under this Declaration, the Association is authorized to reimburse Declarant at a later date for any sums so advanced.

**Section 3.6 Transfer Fee; Status Certificates.** Upon any conveyance of an interest in a Lot (except for sales or transfers by Declarant), the selling Owner shall pay to the Association a transfer fee in an amount determined by the Board from time to time. Upon written request, and for a fee in an amount determined by the Board from time to time, the Association will furnish a certificate signed by an officer or authorized representative of the Association stating whether any Assessments are then due and unpaid.

**Section 3.7 Late Fees; Interest.** If any Owner defaults in the payment of an Assessment, such Owner shall pay interest at the highest rate allowed by applicable usury 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 two percent (2%) per month), together with all costs and expenses of collection, including reasonable attorneys' fees. In addition, the Board may charge late fees for delinquent Assessments in such amounts as the Board may from time to time deem appropriate.

**Section 3.8 Personal Obligation; Secured by Lien.** Each unpaid Assessment, together with late fees, interest thereon and costs of collection thereof as herein provided, shall be the personal obligation of the Owner(s) of the Lot against which the Assessment fell due, and shall be secured by a vendor's lien against each such Lot and all Improvements thereon. The Association may enforce payment of Assessments in accordance with the provisions of this Article. No Owner may exempt himself from liability for such Assessments.

**Section 3.9 Assessment Lien.** All sums assessed under this Article III but unpaid, together with interest and late fees as provided in Section 3.7 above and costs of collection, including attorneys' fees, shall be secured by an assessment lien, which will be a continuing lien and charge on each Lot assessed, and which shall bind each Lot in the hands of its Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The assessment lien shall be superior to all other liens and charges against a Lot, except for tax liens and Mortgage liens securing unpaid sums borrowed for acquisition or improvement of the Lot. The Board may elect to subordinate an assessment lien to any other lien. A subordination must be signed by an officer of the Association. To evidence an assessment lien, the Association shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owner(s) of the Lot subject to the lien and a description of the Lot. The Notice of Lien must be signed by an officer of the Association and recorded in the office of the County Clerk of Hays County, Texas. The assessment lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any Assessment which then has been unpaid more than thirty (30) days after the date due.

Each Owner, by accepting a deed to his Lot, recognizes the assessment lien as existing before he owns his Lot and grants the Board the right and power to bring personal actions against such Owner to collect unpaid Assessments and other sums due hereunder as a debt, and/or to enforce the assessment lien by all methods available for the enforcement of liens (e.g., judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002, as amended or revised from time to time ["§ 51.002"]). By accepting a deed to his Lot, each Owner 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), that Owner's Lot and all rights appurtenant thereto, in trust, for the purpose of securing the Owner's payment of Assessments and other sums described herein from time to time. Any trustee 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 filed in the Office of the County Clerk of Hays County, Texas. If the Board elects to foreclose an assessment lien because of nonpayment of sums secured by such lien, then it shall be the trustee's (or successor trustee's) duty, at the Board's request (which shall be presumed) to enforce this trust and to sell the Lot, and all rights appurtenant thereto, in accordance with the terms of § 51.002, and to convey to the purchaser, with general warranty of title to such purchaser which binds the Owner(s) of such Lot and

their heirs, executors, administrators and successors. Notices required by §51.002 shall be deemed given upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) 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. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred.

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

This Section 3.9 is intended to comply with the provisions of § 51.002, which relates to non-judicial foreclosures. If § 51.002 is amended in a manner which affect this Section, the President of the Association, acting without joinder of any other Owner or Mortgagee 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 IV COMMON AREAS

**Section 4.1 Conveyance of Common Area.** From time to time, and at such time or times as Declarant determines appropriate, Declarant shall identify and convey to the Association, and the Association shall accept, fee simple or easement interests in portions of the Property which shall be held by the Association as Common Area. Declarant and the Association anticipate multiple conveyances of Common Area, and the Association's obligations set forth herein with respect to Common Area shall refer only to the Common Area owned by the Association at the particular point in time. Each conveyance shall be, at Declarant's election, by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions, regulations, and other rights, claims, title exceptions and other matters of any kind or nature affecting all or any of the real property interests conveyed as Common Area, whether of record in the real property records of Hays County, Texas or apparent on the Common Area. Each such conveyance shall be made solely for the benefit of the Owners and all right, title and interest in the Common Area so conveyed shall be held by the Association solely for the use and benefit of the Owners. Any such conveyance shall be made by Declarant and accepted by the Association, "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. WITHOUT LIMITING THE FOREGOING, DECLARANT SHALL NOT MAKE AND SPECIFICALLY SHALL NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE COMMON AREA, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY OF THE COMMON AREA OR ANY SURROUNDING AREAS, (B) THE VALUE OF THE COMMON AREA, (C) THE SUITABILITY OF THE COMMON

AREA FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY COMMON AREA OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE COMMON AREA, OF ANY ASBESTOS, PCB EMISSIONS, HYDROCARBONS, RADON GAS, OR HAZARDOUS OR TOXIC MATERIALS, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE COMMON AREA OR MATERIALS, IF ANY, INCORPORATED INTO THE COMMON AREA, (G) THE STATE OF REPAIR OR LACK OF REPAIR OF THE COMMON AREA OR ANY IMPROVEMENTS THEREIN OR THERETO, OR (H) ANY OTHER MATTER WITH RESPECT TO THE COMMON AREA. IF THE ASSOCIATION OR ANY OWNER REQUESTS ANY INFORMATION WITH RESPECT TO THE COMMON AREA, THE ASSOCIATION OR OWNER SHALL ACKNOWLEDGE THAT SUCH INFORMATION SHALL NOT HAVE BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANT. DECLARANT SHALL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANT SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE COMMON AREA, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. The Association shall and hereby does agree to indemnify and hold harmless Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Common Area.

**Section 4.2 Extent of Easements.** Every Owner shall have the right and easement of enjoyment in and to the Common Area, which right and easement is appurtenance to the Lots, and which is subject to the following rights of the Association or (where expressly stated below), Declarant:

- (1) **Rules and Regulations.** The right to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Area.
- (2) **Conveyance.** The right to convey all or any part of the Common Area; provided, however, that after Declarant is no longer a Class B Member, any such conveyance must be approved by two-thirds (2/3) of the votes 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 ten (10) days in advance and shall set forth the purpose of the meeting.
- (3) **Mortgages.** The right to borrow money to improve all or any part of the Common Area, and to mortgage, pledge or hypothecate the Common Area or any other Association real or personal property as security for money so borrowed or debts so incurred; provided, however, that after Declarant is no longer a Class B Member, any such mortgage, pledge or hypothecation must be approved by two-thirds (2/3) of the votes 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 ten (10) days in advance and shall set forth the purpose of the meeting.
- (4) **Protection.** The right to take such steps as are reasonably necessary to protect the Common Area, or any part thereof, against foreclosure.
- (5) **Suspension of Rights.** The right to suspend as to any Member the easements herein described during any time such Member is delinquent in the payment of any Assessment or otherwise in violation of these Restrictions.

(6) **Declarant's Rights.** Declarant's right (hereby expressly reserved) to use and enjoy the Common Area for construction offices, construction staging areas, and for any other purpose whatsoever.

**Section 4.3 Condemnation.** If any Common Area is condemned or sold lieu of condemnation, the funds payable with respect thereto will be payable to the Association and will be used by the Association in the Board's discretion to benefit the Property and the Owners, including without limitation, to reduce Regular or Special Assessments payable hereunder.

**Section 4.4 Use, Occupancy or Improvement.** No Common Area shall be improved, used or occupied, except as may be approved by Declarant, or if Declarant is no longer a Class B Member, by the Board. Such required approval shall extend to the nature and type of use, occupancy and improvement.

## ARTICLE V REPAIR AND MAINTENANCE; CASUALTY

**Section 5.1 Owner's Obligation.** Each Owner shall keep such Owner's Lot free of trash and other unsightly material. Improvements shall at all times be kept in good, attractive condition and repair, and adequately painted or otherwise maintained by the Owner and/or occupants thereof. By way of example, maintenance obligations include (but are not limited to): maintenance of all visible exterior surfaces of Improvements and prompt removal of paper, debris, and refuse; removal of dead or diseased trees from the Property (except within the Scenic Buffer Easement areas); prompt replacement of dull and/or peeling paint from the exterior of Improvements; and during construction, the cleaning of dirt, construction debris, and other construction-related refuse from street and storm drains and inlets as often as deemed necessary by the Board. The DRC's recommendations with respect to tree disease control shall be followed immediately. Owners of unimproved Lots shall keep same free of debris, refuse, trash or other unsightly material. Declarant, the Association, and the DRC may at any reasonable time enter upon any Lot as provided in Section 2.4(3) above to perform the Owner's obligations hereunder, and the cost of such entry and performance shall be levied against such Owner and Lot as a Compliance Assessment.

**Section 5.2 Casualty Damage.** If an Improvement is damaged or destroyed by casualty, hazard or other cause, including fire or windstorm, then within a reasonable period (not to exceed ninety (90) days after the occurrence of the event), the Owner of the affected Improvement either shall begin (and thereafter diligently pursue to completion) repair or restoration of the Improvement, or shall remove all debris from the Lot. Any such repair or rebuilding shall be approved and accomplished in the manner required for new construction under the Restrictions.

## ARTICLE VI EASEMENTS

**Section 6.1 In Common Area.** Declarant hereby reserves the right to grant perpetual, non-exclusive easements upon, across, over, through and under any portion of the Common Areas for the installation, replacement, repair, maintenance, use and operation of appropriate improvements for the following purposes: ingress and egress, parking drainage and storm water management, water quality, and utilities (public and private), including, without limitation, cable television, telephone, gas, electric systems, and telecommunications. Declarant further reserves the right to enter upon any Common Area to install or build thereon improvements for the purposes described in this Section. Declarant may retain title to any and all facilities or improvements so installed on or in such easement areas.

**Section 6.2 Right of Entry.** Declarant hereby reserves on behalf of Declarant, the Association, and the DRC the right and easement to enter upon each Lot for the purposes provided in Sections 2.4(3) and 5.1 above or Section 10.2 below, in accordance with each such Section.

**Section 6.3 Utility Easements.** Declarant reserves the right to modify in any way all easements, dedications, limitations, rights-of-way, restrictions, and reservations shown on a Plat or otherwise dedicated before the Property was subject to this Declaration so as to most efficiently and economically develop the Property. Further, Declarant (i) reserves the right to unilaterally grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, electricity, telephone and drainage) in favor of any person along any front, rear, or side boundary line of any Lot or of any Scenic Buffer Easement, and (ii) to establish easements upon, across, over, and under all of the Property for ingress and egress in order to install, replace, repair, and maintain utility facilities, including but not limited to, water, gas, telephone, cable, and electric facilities and appurtenances. The easements described in phrase (i) above shall have a maximum width of twenty-five feet (25') along Lot lines which are next to public or private streets, and a maximum width of ten feet (10') along any other boundary line of a Lot or Scenic Buffer Easement. These easements expressly allow utility companies and other service providers to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. The surfaces of easement areas may be used to plant vegetation (subject to compliance with other provisions of the Restrictions), and for no other purpose, but neither Declarant nor any provider of a utility service who uses any such easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any such vegetation because of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area. Any utility company furnishing service may remove trees within the utility easements shown on a Plat, and trim overhanging trees and shrubs located on portions of the Property abutting such easements.

**Section 6.4 Drainage Easements.** Easements for the installation and maintenance of storm water drainage facilities, including without limitation, conveyancing facilities, retention/detention ponds, and/or conservation areas are reserved as shown on the applicable Plat or dedicated by separate instrument. Each Owner agrees to not do anything which would alter or change the course of any drainage so as to divert, increase, accelerate or impede the flow of water over and across such easements. More specifically, no Owner (i) may modify the existing natural vegetation or design of the drainage easement so as to affect the flow of surface water through same; (ii) may modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the DRC (which shall not be granted unless the Owner provides a written report from a licensed civil engineer certifying that the proposed action will have no adverse effect on any other portion of the Property); (iii) may erect or install a fence or other structure of any type or nature within the easement area (however, the DRC may approve a fence if proper openings are incorporated therein to accommodate the flow of water over the easement (as certified by a written report from a licensed civil engineer and as authorized by all applicable governmental agencies); or (iv) may place, store or allow to accumulate any item, trash, garbage, leaves, limbs or other debris within or upon the easement area, either on a temporary or permanent basis.

**Section 6.5 Temporary Completion Easement.** Declarant hereby establishes over and upon each Lot (but outside of the Inclusive Building Area) an easement of ingress and egress to the extent convenient or necessary to allow Declarant and/or the Association to build, provide service to, and/or complete Improvements on other Lots or Common Areas. This easement shall terminate as to any Lot at the end of the thirty-sixth (36<sup>th</sup>) month after Declarant conveys the Lot to an Owner. If Declarant or the



Association damages a Lot in using this easement, the party causing the damage shall repair same (or replace damaged landscaping) at such party's expense.

**Section 6.6 Scenic Buffer Easement.** Declarant hereby reserves for Declarant's benefit, and establishes for the benefit of the Association, upon, over and across all areas designated as "Scenic Buffer Easements" on Exhibit A, perpetual, exclusive rights and easements for the maintenance and preservation of the Scenic Buffer Easement areas in their natural state, together with the right to enter upon such areas in order to maintain, preserve and care for same. Each Owner acknowledges and agrees to preserve the Scenic Buffer Easement areas in their natural state to the greatest extent possible so as to benefit wildlife and preserve the natural beauty of the Property. Areas covered by Scenic Buffer Easements, are not Common Area, but will be maintained by Declarant or the Association and not by the Owners; provided, however, that Declarant or the Association may direct any one or more of the Owners to perform specific maintenance tasks within a Scenic Buffer Easement area located upon such Owner's Lot. Except as provided in the preceding sentence, only Declarant, or the Association or their agents and contractors may perform work in a Scenic Buffer Easement area, and within such Easement areas, without the Association's prior written approval, no Owner may engage in any activity which modifies the natural environment, including but not limited to, mowing, edging, watering, planting, clipping, sweeping, pruning, raking, removing trees or dead limbs, grading, clearing, building any Improvement, or in any way modifying the natural landscape.

**Section 6.7 Fence and Landscaping Easements.** Declarant hereby reserves for Declarant's benefit, and establishes for the benefit of the Association, upon, over and across all areas of a Lot which lie within five (5) feet of a street, perpetual, exclusive rights and easements for the purposes of constructing, installing, operating, planting, maintaining, replacing, upgrading, repairing, replanting and removing fences and associated landscape and drainage improvements, along with such other related improvements as Declarant may deem necessary or appropriate, for the use and benefit of the Property. The areas covered by these easements are not Common Area, but will be maintained by Declarant or the Association and not by the Owners.

**Section 6.8 Delegation.** Declarant may delegate its rights under this Article to the Board in whole or part by written instrument. If no such written delegation has occurred within two (2) years after Declarant ceases to be a Class B Member of the Association, delegation of these rights to the Board shall be conclusively deemed to have occurred.

## ARTICLE VII USE AND OCCUPANCY

**Section 7.1 Residential Use.** All Lots shall be improved and used solely for single family residential use, including garages, fencing, barns, stables and other Improvements reasonably and customarily incident to residential use. Declarant, for so long as Declarant is a Class B Member, and thereafter the Board, may allow an additional use of a Lot (or specified area thereof) for accessory commercial agricultural uses, such as boarding of horses or operation of orchards or vineyards.

**Section 7.2 Incidental Uses.** Except as authorized in accordance with the last sentence of Section 7.1, no trade or business may be conducted in or from any Lot, except as follows: an Owner or occupant may conduct business activities that are incidental to the primary residential use so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity conforms to all provisions of the Restrictions; (iii) the business activity does not involve regular visitation to the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents in the Property; (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous

or offensive use; and (v) the business activity does not threaten the security or safety of other residents. Day care facilities, churches, nurseries, pre-schools and similar facilities are expressly prohibited.

**Section 7.3 Leases.** Notwithstanding Section 7.2, an Owner's lease of the Owner's entire Lot for at least a six-month term shall not violate this Declaration if all other provisions of this Declaration are complied with.

## ARTICLE VIII GENERAL RESTRICTIONS

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

**Section 8.1 Hazardous Activities; Noise and Nuisance.** No activity shall be conducted on the Property which is or may be unsafe or hazardous to any person or property. No exterior speaker, horn, whistle, bell, or other sound device (other than security devices used solely for security purposes) shall be used or placed on the Property. No noxious or offensive activity will be permitted or conducted on the Property, nor will anything be done thereon which may be or may become an annoyance or nuisance to other occupants of the Property.

**Section 8.2 Temporary Structures; Manufactured Housing; Mobile Homes.** No tent, shack, or other temporary building, structure or improvement may be placed upon the Property without prior written consent of the DRC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for Design Professionals, Builders, and foremen during actual construction may be maintained with Declarant's prior written approval, which will include the nature, size, duration, and location of such structure. No manufactured housing or prefabricated dwelling structure may be placed or assembled on a Lot, and no mobile home or pre-existing Improvement may be moved onto any Lot. The use of prefabricated building materials other than trusses, wall panels, windows and doors is prohibited unless expressly approved by the DRC.

**Section 8.3 Signs.** No sign or emblem of any kind may be displayed to Public View on the Property without the prior written approval of the DRC, whose approval may be withdrawn at any time without cause, except that (i) one (1) sign not exceeding six (6) square feet in area may be erected on a Lot to advertise the Lot for sale or rent, and (ii) Declarant may place on the Property signs which are part of Declarant's overall marketing plan for the Property.

**Section 8.4 Vehicles.** The term "vehicle" shall include, without limitation, passenger cars, pickups, trailers, graders, trucks, boats, marine craft, hovercraft, boat trailers, tractors, campers, camper bodies, wagons, buses, motorcycles, all terrain vehicles, motor scooters, travel trailers, motor homes, golf carts, other types of recreational vehicles, and non-passenger vehicles, equipment, implements or accessories, including garden maintenance equipment. All vehicles kept on a Lot shall be kept at all times (except when in actual use, or with respect to recreational vehicles, except during the period of time such recreational vehicle is being loaded, unloaded or cleaned) in enclosed structures or screened from Public View with screening approved by the DRC. No repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures screened from Public View. No vehicle without current inspection stickers and licenses (to the extent required by law) shall be stored within the Property without the prior written approval of the DRC. All vehicles shall be in operable condition, and no abandoned or derelict vehicle may be stored or located anywhere on a Lot. No vehicle of any size that transports flammable or explosive cargo may be stored on the Property at any time, but this prohibition shall not prohibit the delivery of propane or natural gas service

to the Property. No Owner (other than Declarant) may park or allow to be parked any vehicle on a Street or Common Area. Any dispute as to whether a Lot complies with this Section 8.4 shall be resolved by the DRC, in its sole discretion.

**Section 8.5 Household Pets.** No animal may be kept on a Lot other than (i) cats, dogs and other generally recognized household pets, and (ii) livestock maintained in accordance with Section 8.6 below. No vicious or dangerous animals shall be allowed on the Property. Questions as to whether an animal is a "generally recognized household pet" or a "vicious or dangerous animal" shall be submitted to the Board, and the Board's determination (which shall be at the Board's sole discretion), shall conclusively bind the Owner wishing to maintain the animal. The Board may adopt rules limiting the number of domestic pets kept on any Lot. All animals on the Property will be kept in strict accordance with all rules established by the Association. All household pets must be properly tagged for identification and vaccinated. No animal may run at large, and all animals must be kept within enclosed areas within the Inclusive Building Area which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Any enclosed area must be built in accordance with plans approved by the DRC, must be of reasonable design and construction to adequately contain such animal in accordance with the provisions hereof and must be screened from Public View. Without prior written approval of the Board, 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 make an unreasonable amount of noise, or to become a nuisance. Any question as to whether an animal is a nuisance or makes an unreasonable amount of noise shall be resolved by the Board, in the Board's sole discretion. The Board may require any animal determined to be a nuisance or to make an unreasonable amount of noise to be removed from the Property on a temporary or permanent basis.

**Section 8.6 Livestock.** The term "livestock" shall mean cows, horses, bees, hogs, pigs, sheep, goats, ducks, geese, chickens, or turkeys. Livestock may be kept on a Lot only in strict compliance with this Section 8.6, so that the Property's general scenic beauty will be enhanced (and not diminished) by the presence of livestock on a Lot. No livestock may be kept on the Property without the Board's prior written approval. The Board shall approve the presence of livestock only if and to the extent the Owner establishes and continues buildings, policies and procedures which enhance the health, safety, and beauty of the Creek Road Ranch community. Such buildings, policies and procedures shall include, at a minimum, establishing maximum numbers of any type of livestock proposed for the Lot and requiring the Owner to provide appropriate shelters for the livestock, the plans and specification for which shall be subject to DRC approval. Livestock shall be kept only within Pasture Areas, except when in shelters located in the Inclusive Building Area and approved by the DRC. Fences must be built in accordance with the Design Guidelines so as to effectively contain livestock within the applicable Pasture Area. If, in the Board's sole discretion, any overgrazing occurs, the Board may change or terminate prior approvals. Livestock are prohibited within Common Areas, except that horses may be ridden on designated bridle paths (if any) situated therein.

**Section 8.7 Wildlife Management.** Either Declarant or the Board may cause the Property to participate in the Hays County Wildlife Management Program. In such event, Declarant or the Board (i) shall adopt a Wildlife Management Plan for the Property, which shall be binding on each Owner upon receipt of notice that such Plan has been adopted, and (ii) shall enact rules and regulations to implement the terms and conditions of the Wildlife Management Plan. The Wildlife Management Plan and rules and regulations thereunder may impose obligations and prohibitions on Owners which are not set forth in this Declaration, but which are designed to facilitate harmonious relations with native wildlife. Regardless of whether a Wildlife Management Plan is adopted, feeding of wildlife is prohibited within the Property. Planting materials, even when intended to feed and attract songbirds, butterflies, bees or other creatures, shall not be deemed "feeding of wildlife" for purposes of the preceding sentence.

**Section 8.8 Garbage and Refuse Disposal.** No rubbish or debris of any kind (including weeds, brush or other materials) shall be placed or allowed to accumulate upon the Property. No odors shall be permitted to arise from a Lot which would render any portion of the Property unsanitary, unsightly, offensive, or detrimental to other portions of the Property, other property or the occupants of same. All trash, garbage and other waste must be kept in covered, sanitary containers. All equipment for the storage or disposal of such material will be kept in a clean and sanitary condition. No such containers or equipment may be stored, kept, placed or maintained in Public View on any Lot except to make same available for collection, and then only for the shortest time necessary for collection. Any dispute as to whether materials constitute rubbish or debris shall be resolved by the Board in the Board's sole discretion.

**Section 8.9 Parking.** No vehicle (as defined in Section 8.4) may be driven or parked outside a Lot or within any Scenic Buffer Easement area, unless on Streets or Common Areas designated as either parking areas or private access easements, unless the vehicle is then being used to maintain the Common Area or a license area. No mobile home or manufactured housing in transit shall be parked or placed on any Lot, Street or Common Area at any time. No vehicle may be parked along any Street except as follows: Owners and their guests and invitees may park vehicles along the Street in front of such Owner's Lot so long as such vehicle (i) is not parked for more than twelve (12) hours, (ii) is not parked overnight, and (iii) does not impede traffic or access to and from any other Lot. Any vehicle parked upon a Lot shall be parked only within paved or gravel areas designated for parking in the Plans and Specifications approved by the DRC.

**Section 8.10 Unsightly Articles.** No unsightly article may be placed on any Lot in Public View, including withing limitation, facilities for hanging, drying or airing clothing or household fabrics. All facilities for hanging, drying or airing fabrics shall be located within the Inclusive Building Area. Any dispute as to whether an article is unsightly shall be resolved by the DRC, in its sole discretion.

**Section 8.11 Mining and Drilling; Storage Tanks.** No portion of the Property shall be used for mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, and no shafts, wells (except for water wells) or derricks may be placed upon the Property. The location of any tank used or proposed in connection with a Dwelling Unit, including tanks for storage of fuel, water, or oil, and swimming pool filter tanks, must be approved by the DRC. All tanks shall be screened from Public View and shall be used only for household use. No commercial tanks may be placed on the Property.

**Section 8.12 Security.** NEITHER THE ASSOCIATION NOR DECLARANT WILL PROVIDE ANY SECURITY WHATSOEVER TO THE PROPERTY. EACH OWNER IS SOLELY RESPONSIBLE FOR PROVIDING SECURITY FOR THEIR HOME AND PROPERTY.

**Section 8.13 Burning.** No burning of any type may occur on a Lot or within a Common Area except within interior fireplaces of residential dwellings, and except for outdoor cooking or fire pits approved in writing by the DRC.

**Section 8.14 Utilities.** Subject to the provisions of the Telecommunications Act and requirements of utility service providers, no utility lines, including but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television, or other type of line or wire shall be erected, placed, or maintained anywhere in or upon any portion of the Property unless contained in pipes, conduit or cables installed and maintained underground or concealed in, under, or on buildings or other Improvements. This Section will not prohibit the erection of above-ground temporary utility facilities supporting the initial construction of a Dwelling Unit. The installation of utility facilities, including but not limited to, location, type of installation equipment, trenching method and other aspects of

installation for both temporary and permanent utilities shall be shown in the Plans and Specifications and shall conform to all requirements of governmental authorities or the applicable utility provider.

**Section 8.15 Exterior Holiday Decorations.** Lights or decorations may be erected on a Lot in Public View (but not within any Scenic Buffer Easement area) in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not conflict with any Wildlife Management Plan, unreasonably illuminate adjacent Lots or Common Areas, create noise or attract sightseers. All lights and decorations that are not either affixed to the Dwelling Unit as a part of the original construction or approved as permanent improvements by the DRC must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed before November 1<sup>st</sup> of any year. For other holidays, decorations or lights may not be displayed more than 3 weeks in advance of the holiday.

**Section 8.16 Firearms; Hunting.** Within the Property no firearms or fireworks may be discharged, and no hunting or trapping (whether by firearms, bows, snares or otherwise) may occur, except that Declarant and/or the Board may harvest and/or remove wild animals from the Property (including but not limited to white tail deer) when deemed appropriate by Declarant or the Board, in their sole discretion.

**Section 8.17 Antennae, Broadcast Equipment and Devices.** No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location *unless* a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the DRC. The DRC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "Telecommunications Act"), without DRC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Lot, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the Dwelling Unit on the Lot, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof. This Article 8, Section 8.17 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Article 8, Section 8.17, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("OTARD") promulgated under the Telecommunications Act or other rules and regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the DRC to act reasonably, or respond promptly, such obligation shall be deemed a part of the DRC's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically shall be deemed deleted, and Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

**Section 8.18 Division and Consolidation.** After a Plat is recorded, without Declarant's (or if Declarant is no longer a Class B Member, the DRC's) approval, no Lot shown thereon shall be further divided or subdivided, nor may any Lots be combined to form one Lot, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that when Declarant is the Owner of a Lot, Declarant may divide and subdivide any Lot so owned, combine any Lots owned by Declarant into any combination Declarant may elect, and convey easements or other interests less than the whole in any Lot without any approval. This Section does not require consent to granting a Mortgage or conveying undivided interests in a Lot to persons holding same as tenants in common. If

Declarant or the DRC approves a combination of multiple Lots into one Lot, the Owner of the consolidated Lots shall pay Assessments as if no consolidation had occurred (so that if two Lots are combined into one, the Owner shall pay Assessments for two Lots); but for all other purposes of this Declaration, the consolidated lots shall be deemed one Lot.

**Section 8.19 Construction Activities.** This Declaration shall not be interpreted so as to interfere with or prevent normal construction activities during the construction of Improvements by any Owner on the Owner's Lot or by Declarant anywhere on the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or to violate this Declaration because of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, so long as the construction is pursued to completion with reasonable diligence and conforms to good construction practices in the Austin, Texas metropolitan area. If the Board, in its sole discretion, determines that construction upon any Lot does not so conform to good construction practices, the Board may seek an injunction to stop such construction. Further, if during the course of construction upon any Lot there is excessive accumulation of any type of debris which renders any part of the Lot unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Board may cause such debris to be removed, and assess the Owner of the Lot a Compliance Assessment for all expenses incurred in connection therewith. During initial construction of a Dwelling Unit on a Lot (and if the DRC so requires, during any renovation on a Lot), the Lot shall have an enclosed 8 x 8 trash storage area or dumpster. Such storage area or dumpster shall be removed promptly after construction is completed.

**Section 8.20 Completion of Construction.** No Improvement shall remain unfinished for more than eighteen (18) months after construction begins.

**Section 8.21 Pasture Areas.** The Pasture Areas situated on a Lot (if any) may be used only to graze and maintain livestock and otherwise in accordance with this Section 8.21. No Dwelling Units or garages may be located within Pasture Areas, and no Landscaping may be installed or built within Pasture Areas, but accessory buildings or structures reasonably related to the maintenance and shelter of livestock (including barns, stables, well houses, fences and similar structures) may be placed within Pasture Areas with DRC approval. No agricultural operations (such as vineyards, crops, orchards or other introduced vegetation or crops) may occur within Pasture Areas, and no modification of the natural landscape (except for improvement of pasture grasses through seeding and maintaining non-aggressive pasture grass species approved by the DRC) may occur within Pasture Areas (other than mowing as provided below) without the Board's prior written approval. All Pasture Areas shall be mowed and maintained in a neat, attractive manner (*i.e.*, grasses shall be trimmed below three feet (3') in height; small trees and shrubs shall be restrained from growth, and fences shall be kept in good repair), and otherwise in accordance with the provisions of Section 5.1 above.

## ARTICLE IX DESIGN REVIEW

**Section 9.1 Review by DRC.** No clearing or grading may occur on a Lot, nor may any other Improvement be built, installed, or erected, until the DRC has approved Plans and Specifications for same. Further, no repair or alteration which changes the exterior appearance of any Improvement, and no removal of any Improvement, shall be performed without the DRC's prior approval (*e.g.*, exterior repainting of any Improvement with a color or colors, or in an area or areas, other than those originally approved by the DRC shall require DRC approval).

**Section 9.2 Goals.** The DRC shall perform design review to accomplish the following goals:  
(i) ensuring that design, construction and location of Improvements occurs within the Inclusive Building Area

or other appropriate areas of a Lot (*e.g.*, that Improvements do not encroach over easements or set back lines, that except as for appurtenant structures expressly approved within Pasture Areas under these Restrictions, Dwelling Units and appurtenant structures are located only within Inclusive Building Areas, and that Scenic Easement Areas remain undisturbed); (ii) preventing excessive or unsightly grading, indiscriminate earthmoving or clearing of land, removal of trees and vegetation which could cause disruption of natural watercourses or scar natural land formations; (iii) ensuring that the architectural design of structures and their materials and colors are visually harmonious with Creek Road Ranch's general appearance, including the natural land formations and native vegetation; (iv) ensuring that the location and configuration of Improvements are visually harmonious with the terrain and native vegetation, and with surrounding Lots and Improvements, and do not unnecessarily block scenic views from existing buildings or tend to dominate open spaces or the natural landscape; (v) ensuring that Improvements are located so as to provide ample and visually pleasing spaces between such Improvements and Improvements on other Lots; (vi) confirming that Improvement designs comply with Plans and Specifications approved by the DRC; (vii) ensuring that proposed Landscaping will provide visually pleasing settings for other Improvements on the Lot and on adjoining and nearby Lots and will blend harmoniously with the natural landscape; (viii) ensuring that Improvements comply with the Restrictions; and (ix) requiring, where practical, best practices in building design and construction techniques as to environmental quality considerations, such as heat gain, solar orientation, shading, natural ventilation, air emissions, and water run-off quality.

**Section 9.3 DRC Composition and Appointment.** The DRC shall consist of not more than three (3) voting members ("Voting Members"). The initial Voting Members are designated in the Design Guidelines. Only Declarant may appoint or remove Voting Members. Declarant may delegate this right to the Board in whole or part by written instrument. If no such written delegation has occurred within two (2) years after Declarant is no longer a Class B Member, delegation of this power to the Board shall be conclusively deemed to have occurred.

**Section 9.4 Term.** Each Voting Member shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. In the event of death or resignation of any Voting Member, the remaining Voting Member or Voting Members shall have full authority to act until a replacement Voting Member has been designated.

**Section 9.5 Conflicts of Interest.** Any Voting Member appointed by Declarant may review Plans and Specifications for all Lots within the Property, regardless of whether Declarant owns a particular Lot at the time such review occurs. Except for Voting Members appointed by Declarant, no Voting Member may review Plans and Specifications for any Lot in which that Voting Member has an ownership or equity interest, or for which that Voting Member has received compensation for providing any type of service, including without limitation, design services, construction or construction management services, brokerage services, marketing services, sales, development consultation or commercial gain of any kind.

**Section 9.6 Adoption of Rules.** The DRC has adopted Design Guidelines which will govern the design and construction of all Improvements, and may adopt such additional procedural and substantive rules, procedures, standards and processes, not in conflict with this Declaration, as the DRC deems necessary or appropriate to perform its duties and to govern the orderly development of the Property. The Design Guidelines may be obtained from the DRC at the address set forth in Section 9.16 below, or at any manager's address set forth in a Notice filed in the Official Records of Hays County, Texas. Upon adoption, copies of any additional rules, procedures, standards and processes shall be delivered to the then-existing Owners. The Design Guidelines, rules, procedures, standards and processes may include building codes, fire codes, housing codes, and such other codes as the DRC deems necessary or appropriate. The Design Guidelines and any adopted rules, procedures, standards and processes are Restrictions and are binding and enforceable against each Owner in the same manner as any other provision of this Declaration. From time to time, the

DRC, in its discretion, may amend the Design Guidelines and adopted rules, procedures, standards and processes, and upon delivery of copies of same to the then-existing Owners, the amended Design Guidelines, rules, procedures, standards and processes shall constitute the revised Restrictions under this Declaration.

**Section 9.7 Action of the DRC.** The DRC, by resolution unanimously adopted in writing, may designate one or two of its Voting Members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the DRC. In the absence of such designation, the vote of a majority of the members of the DRC, whether taken within or without a meeting, shall constitute an act of the DRC. If the DRC does not approve any proposed Plans and Specifications, within fifteen (15) days' after an Owner's request, the DRC shall deliver such Owner a written letter of disapproval, stating the element or elements disapproved. If, however, the DRC fails to respond to a request for approval of Plans and Specifications within thirty (30) days after receipt of *all* required information and fees, and such failure continues for an additional ten (10) days after written request to the DRC (which request shall state that such thirty-day period has expired), the DRC shall be deemed to have approved such Plans and Specifications.

**Section 9.8 Submission Requirements.** Specific submission requirements and the plans and information which generally comprise the Plans and Specifications are set forth in the Design Guidelines. The DRC further may establish specific submission requirements designed to address a particular case under consideration. Owners must comply with all submission requirements before the DRC will be obligated to review any proposed Plans and Specifications. The DRC shall not approve Plans and Specifications unless the DRC determines, in its discretion, that the proposed Improvements will conform to the provisions of this Declaration, including the Goals described in Section 9.2 above, and with the other Restrictions. The DRC's approval or disapproval of any proposed Improvement shall be final and binding so long as it is made in good faith.

**Section 9.9 Approval of Builders and Design Professionals.** Declarant may approve the identity of all Builders who build, and Design Professionals who design, Improvements upon the Property. If any Owner wishes to obtain Declarant's approval for a particular Builder or Design Professional before purchasing any Lot, such Owner shall submit a written request to Declarant which identifies the Builder and/or Design Professional and provides any information about the Builder or Design Professional which the Owner wishes Developer to consider. Any request for approval of a Design Professional shall include evidence that such Design Professional has the credentials set forth in the Design Guidelines. Thereafter, Declarant shall notify such Owner in writing as to whether the Builder or Design Professional is approved or disapproved. No Owner may submit Plans and Specifications until the Design Professionals developing same have been approved by Declarant, nor may any Owner build any Improvements unless the Builder for same has been approved by Declarant. Each Owner, by acceptance of a deed to such Owner's Lot, agrees that Declarant shall have complete and sole discretion to approve or disapprove any Builder or Design Professional for any reason whatsoever. Declarant's right of approval shall be deemed assigned to the Board at such time as Declarant ceases to be a Class B Member of the Association.

**Section 9.10 Limits of Approval.** The DRC shall not review, and shall not be responsible for reviewing, any proposed Improvements, nor shall its approval of any Plans and Specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental authorities.

**Section 9.11 Owner's Burden to Comply.** Any errors or omissions contained in any information submitted to the DRC shall be the responsibility of the Owner submitting such information. The DRC has no obligation to find errors or omissions. The DRC's failure to disapprove a submission which does not comply with a specific provision of this Declaration shall not waive the Owner's obligation to comply with such provision.



**Section 9.12 Expiration of Approvals.** Any DRC approval of specific Plans and Specifications will expire one (1) year after the approval is granted unless construction of the Improvements described therein is begun and thereafter diligently pursued to completion. The DRC may extend the expiration period for approval from time to time upon request from the Owner of the Lot. If an approval of specific Plans and Specifications expires, the Owner may not begin any clearing or construction until Plans and Specifications again are submitted to, and approved by, the DRC. The DRC may re-evaluate any such Plans and Specifications in light of any change in circumstance since the initial approval.

**Section 9.13 Variances.** The DRC, in its sole discretion, may approve Plans and Specifications which reflect Improvements which vary from specific provisions of the Design Guidelines. Any variance, however, shall be consistent with the goals stated in Section 9.2 above. Each variance request submitted to the DRC shall be reviewed separate and apart from any other request and the granting of any variance shall not establish a precedent for any future review, variance or approval. Each variance request must identify and set forth in sufficient detail the specific provision from which a variance is sought and describe in complete detail the exact nature of the variance sought and the reason(s) for the request for the variance. Any variance granted by the DRC must be in writing and must identify in detail both the provision from which the variance is being sought and the specific variance being granted.

**Section 9.14 Review of Work in Progress.** The DRC may, but is not obligated to, observe and inspect all work in progress for Improvements to ensure compliance with approved Plans and Specifications.

**Section 9.15 No Waiver.** DRC approval of any Plans and Specifications or other matter requiring the DRC's consent or approval or grant of any variance shall not constitute a waiver of any right to withhold approval (of Plans and Specifications or a variance) or consent as to any subsequent or different Plans and Specifications or other matter subsequently or additionally submitted for approval or consent by the same or a different person.

**Section 9.16 Address.** Plans and Specifications shall be submitted to the DRC c/o Whit Hanks, 1009 W. 6<sup>th</sup> Street, Austin, Texas 78703, or such other address as may be designated from time to time.

**Section 9.17 Fees.** The DRC may require a reasonable submission fee for each set of Plans and Specifications submitted for its review. The schedule of fees shall be set forth in the Design Guidelines from time to time.

## ARTICLE X ANNEXATION AND WITHDRAWAL OF LAND

**Section 10.1 Staged Project; Annexation of Land.** Declarant, acting without the consent or approval of any other Owner, may annex under the scheme of this Declaration (an "annexation") additional land so long as the owner of such Land (if not Declarant) agrees to such action. Declarant shall accomplish any annexation by recording in the Official Records of Hays County, Texas either a notice of addition or one or more Supplemental Declarations which comply with this Section. Furthermore, after Declarant ceases to be a Class B Member of the Association, the Association may annex land under the scheme of this Declaration at any time with the assent of two-thirds (2/3) of the votes of the Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter. If no modifications to this Declaration will apply to the annexed land, Declarant or the Association may annex the land by filing a notice of addition of land which contains the provisions set forth below. Alternatively, a Supplemental Declaration may be used to accomplish the annexation. A Supplemental Declaration (i) may provide that certain provisions of this Declaration shall not apply to the land annexed by the Supplemental Declaration, (ii) may modify one or more provisions of this Declaration as applied to the land annexed by such

Supplemental Declaration, (iii) may impose different or additional restrictions or conditions upon the land annexed by the Supplemental Declaration, (iv) may provide for the establishment of a Sub-association comprised of the Owners within the land annexed thereby, or (v) may establish its own procedure for the amendment of any provision thereof (for example, by specified vote of only Owners of Lots subject to the Supplemental Declaration, or by specified vote of only the Owners of some Lots subject thereto). An annexation shall be effective upon recording of a notice of addition or Supplemental Declaration, and thereafter this Declaration and all provisions hereof shall apply to the annexed lands and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the annexed lands as with respect to the lands originally covered by this Declaration (except as provided otherwise in a Supplemental Declaration). If there is a conflict between this Declaration and a Supplemental Declaration, the Supplemental Declaration shall control. Each Supplemental Declaration or notice of addition must state that land is being annexed, and must contain at least the following provisions:

- (1) a reference to this Declaration which includes the document number under which this Declaration is recorded in the Hays County Official Records;
- (2) a statement that the provisions of this Declaration shall apply to the annexed land, except as expressly provided otherwise therein;
- (3) a legal description of the annexed land;
- (4) if Declarant is not the owner of the land being annexed, the signatures of both such owner and Declarant; and
- (5) a legal description of any Common Area within the annexed land (to the extent known at the time of the annexation).

Upon the recording of any notice of addition or Supplemental Declaration, all Owners of Lots within the area annexed by same shall have the rights, privileges, and obligations of other Owners herein in accordance with the provisions hereof (unless modified by a Supplemental Declaration), and thereafter the land so annexed shall be included within the term "Property" for all purposes hereof (except as modified by a Supplemental Declaration). Declarant has no any duty or obligation to annex any property under the Declaration, and no owner of property excluded from the Association shall have any right to have such property annexed hereto.

**Section 10.2 Withdrawal of Land.** Declarant may at any time reduce or withdraw lands then owned by Declarant (or other persons with their consent) from the Property, and upon any such withdrawal this Declaration and the provisions hereof shall no longer apply to the lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

- (1) a reference to this Declaration which includes the document number under which this Declaration is recorded in the Hays County Official Records;
- (2) a statement that the provisions of this Declaration no longer apply to the withdrawn land;
- (3) if Declarant does not own the land withdrawn, the signatures of both such owner and Declarant; and
- (4) a legal description of the withdrawn land.

## ARTICLE XI MISCELLANEOUS

**Section 11.1 Enforcement.** Unless expressly stated otherwise herein, any of Declarant, the Association (for itself or on behalf of the DRC) or any Owner (at such Owner's sole expense) may enforce all provisions of this Declaration, and Declarant or the Association (for itself or on behalf of the DRC) may enforce all provisions of the Restrictions. These rights of enforcement include the right to damages and the

right to injunctive relief against the breach of any such provision. Every act or omission which violates any such provision, in whole or in part, is hereby declared to be a nuisance subject to injunction. Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration. All costs incurred by Declarant or the Association in enforcing the Restrictions shall be assessed against the Owner as a Compliance Assessment.

**Section 11.2 Exemption of Declarant.** Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Association or the DRC. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to subdivide property, grant easements, excavate and grade, to alter drainage patterns and facilities, to build any and all other types of improvements, sales and leasing offices and similar facilities, to post signs incidental to construction, sales, and leasing anywhere within the Property, perform work in Scenic Buffer Easement areas and in Common Areas, and to place utility lines and facilities above-ground.

**Section 11.3 Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2035, unless amended as herein provided. After December 31, 2035, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least eighty percent (80%) of the Lots within the Property then subject to this Declaration.

**Section 11.4 Amendment.** This Declaration may be amended by Declarant, acting unilaterally, so long as Declarant is a Class B Member of the Association. Any such amendment will be effective when an instrument executed and acknowledged by Declarant and setting forth the amendment is recorded in the Official Records of Hays County, Texas. In addition to amendments by Declarant, this Declaration may be amended by approval of Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast by the Members. Any such amendment will be effective when an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment, and certifying that the requisite percentage of Owners have approved the amendment, is recorded in the Hays County Official Records.

**Section 11.5 Exculpation of DRC and Board Members.** Neither the DRC, nor any member or agent thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage, or injury arising out of their being in any way connected with the performance of the DRC's or the Board's respective duties under this Declaration, including without limitation the obstruction of views from Lots by any Improvements, approval or disapproval of Plans and Specifications, or construction of any Improvement within the Property, unless due to the willful misconduct, gross negligence or bad faith of the DRC or its member or the Board or its member as the case may be.

**Section 11.6 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

**Section 11.7 Construction.** The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the

validity or ability to enforce any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof. In the event of conflict between the terms of this Declaration and any other of the Restrictions (except for a Supplemental Declaration), this Declaration shall control.

**Section 11.8 Assignment.** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder. Any assignment by Declarant shall be effective only when an instrument executed and acknowledged by Declarant evidencing the assignment is recorded in the Official Records of Hays County, Texas.

**Section 11.9 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 (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices, or, if no address is on file with the Association, at the address reflected in the Hays County Tax Collector's office. Such address may be changed from time to time by notice in writing given by such person to the Association.

**Section 11.10 Imposition of Fines.** Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. In addition to the enforcement rights set forth elsewhere in this Declaration, if any Owner fails to comply with any of the Restrictions within ten (10) days after notice of such failure from Declarant or the Board, such failure shall give Declarant the immediate right to impose fines for non-compliance. Declarant may establish a schedule of fines for violations of the Restrictions, and may adjust the amounts set forth on such schedule from time to time. The schedule, as adjusted, shall be provided to an Owner upon such Owner's request. If any Owner defaults in the payment of a fine so assessed, such Owner shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the fine, beginning ten (10) days after the date the fine is assessed (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. Declarant further may charge a one-time late fee for delinquent payment of a fine in such amount as Declarant may from time to time deem appropriate. The payment of any fine so assessed, together with attorneys' fees, interest and/or late fees thereon, shall be secured by the assessment lien, and to the extent permitted by law, shall be subject to the same penalties for non-payment, including without limitation, judicial or non-judicial foreclosure. Declarant may assign its rights under this Section to the Board at any time. Once the ten-day notice period of a violation has expired, each day during which a violation continues shall be deemed a separate violation for which an additional fine may be imposed. Declarant may delegate its rights under this Section 11.10 to the Board in whole or part by written instrument. If no such written delegation has occurred within two (2) years after Declarant ceases to be a Class B Member of the Association, delegation of these rights to the Board shall be conclusively deemed to have occurred.

**Section 11.11 Dispute Resolution.** No Owner (a "Complaining Owner") may initiate any judicial action or process against Declarant, the Board, the Association or the DRC (as applicable, the "Adverse Party") until and unless (i) the Complaining Owner notifies the Adverse Party that the Complaining Owner intends to institute a judicial action against the Adverse Party, and (ii) the Adverse Party does not elect to submit the dispute to non-binding mediation by notice to the Complaining Owner delivered within thirty (30)

days after the Complaining Owner's notice of intent to institute judicial action. If no election is made within said thirty-day period, the Complaining Owner may proceed to institute a judicial action against the Adverse Party. If any Adverse Party elects to submit the dispute to non-binding mediation, however, the Adverse Party shall so notify the Complaining Owner within said thirty-day period, which notice of election shall include the name of three (3) qualified mediators acceptable to the Adverse Party, and no judicial action or process may be commenced against the Adverse Party until the mediation has concluded. A qualified mediator shall be any attorney-mediator with experience in mediating disputes involving real estate who does not reside within the Property, work for any party involved in the dispute or have any conflict of interest with any party involved in the dispute. The Complaining Owner shall have five (5) days within which to accept one of the three mediators so named in the notice of election and to so notify the Adverse Party. If the Complaining Owner does not timely notify the Adverse Party of the Complaining Owner's acceptance of a mediator, the Adverse Party may select one of the named mediators as the sole mediator for the mediation. The mediation shall take place within thirty (30) days after the mediator is determined. The cost of such mediator shall be paid equally between the parties.

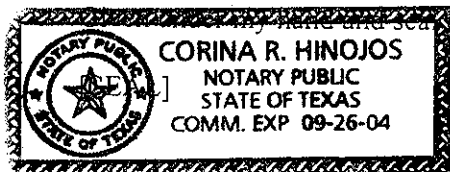
IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of the day and year first above written.

CREEK ROAD RANCH, INC., a Texas corporation

By: Whit H. Hanks  
Whit H. Hanks, President

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

Before me, the undersigned authority, on this day personally appeared Whit H. Hanks, President of CREEK ROAD RANCH, INC., a Texas corporation, on behalf of said corporation, 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.



My Commission Expires:  
9-26-04

of office this 5<sup>th</sup> day of August 2002.

Corina R. Hinojos  
NOTARY PUBLIC, State of Texas  
Print Name: Corina R. Hinojos

First State Bank Central Texas, a Texas state bank ("Lender"), as the owner and holder of a certain deed of trust (the "Deed of Trust") to T. Gerry Gamble, Trustee, dated October 25, 2000, recorded in Volume 1734, Page 465, Official Records of Hays County, Texas, creating a first and superior lien upon the Property (among other property), expressly agrees that the lien of the Deed of Trust, and all of Lender's rights thereunder shall be and remain and are hereby expressly made SUBORDINATE AND INFERIOR to this Declaration and also agrees that this Declaration shall be and remain PRIOR AND SUPERIOR to said Deed of Trust lien and to all of the rights of Lender thereunder.

EXECUTED this 15<sup>th</sup> day of August, 2002.

FIRST STATE BANK CENTRAL TEXAS, a Texas state bank

By: *Derel M. Conley*  
Name: \_\_\_\_\_  
Title: DEREL M. CONLEY  
PRESIDENT

THE STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared Derel M. Conley, President, of FIRST STATE BANK CENTRAL TEXAS, a Texas state bank, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he / she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

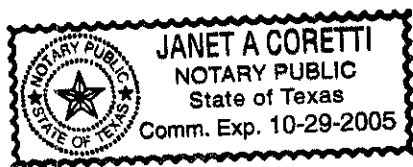
Given under my hand and seal of office this 15<sup>th</sup> day of August, 2002.

[SEAL]

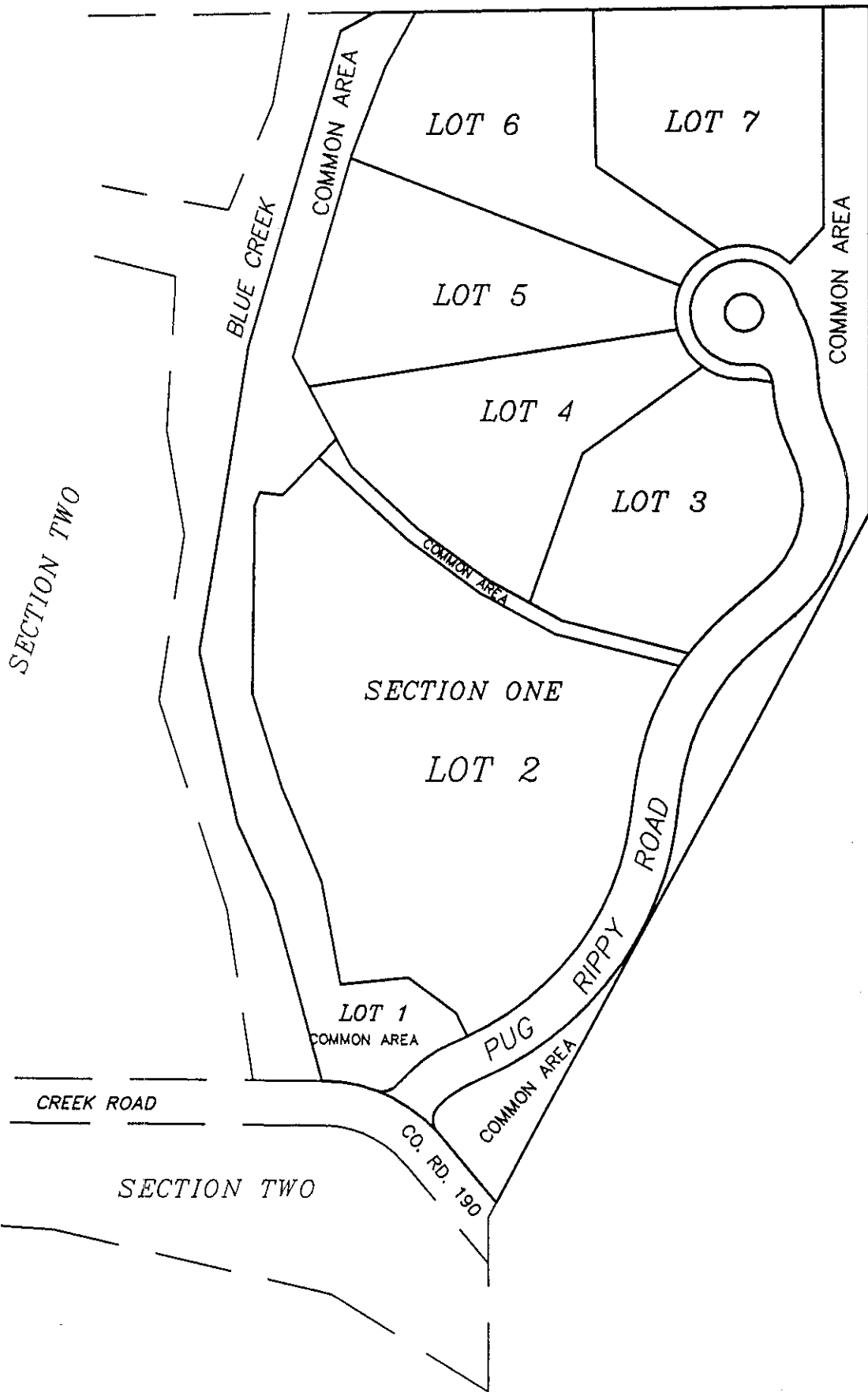
*Janet A. Coretti*  
NOTARY PUBLIC, State of Texas

My Commission Expires:

Print Name: Janet A. Coretti



NORTH  
REF. BEARING: RECORD INFO. 208.10 ACRES



**STAUDT SURVEYING**

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"

**CREEK ROAD RANCH**

**SECTION ONE**

HAYS COUNTY, TEXAS

200 100 0 200 400



GRAPHIC SCALE IN FEET

PAGE 1 OF 7

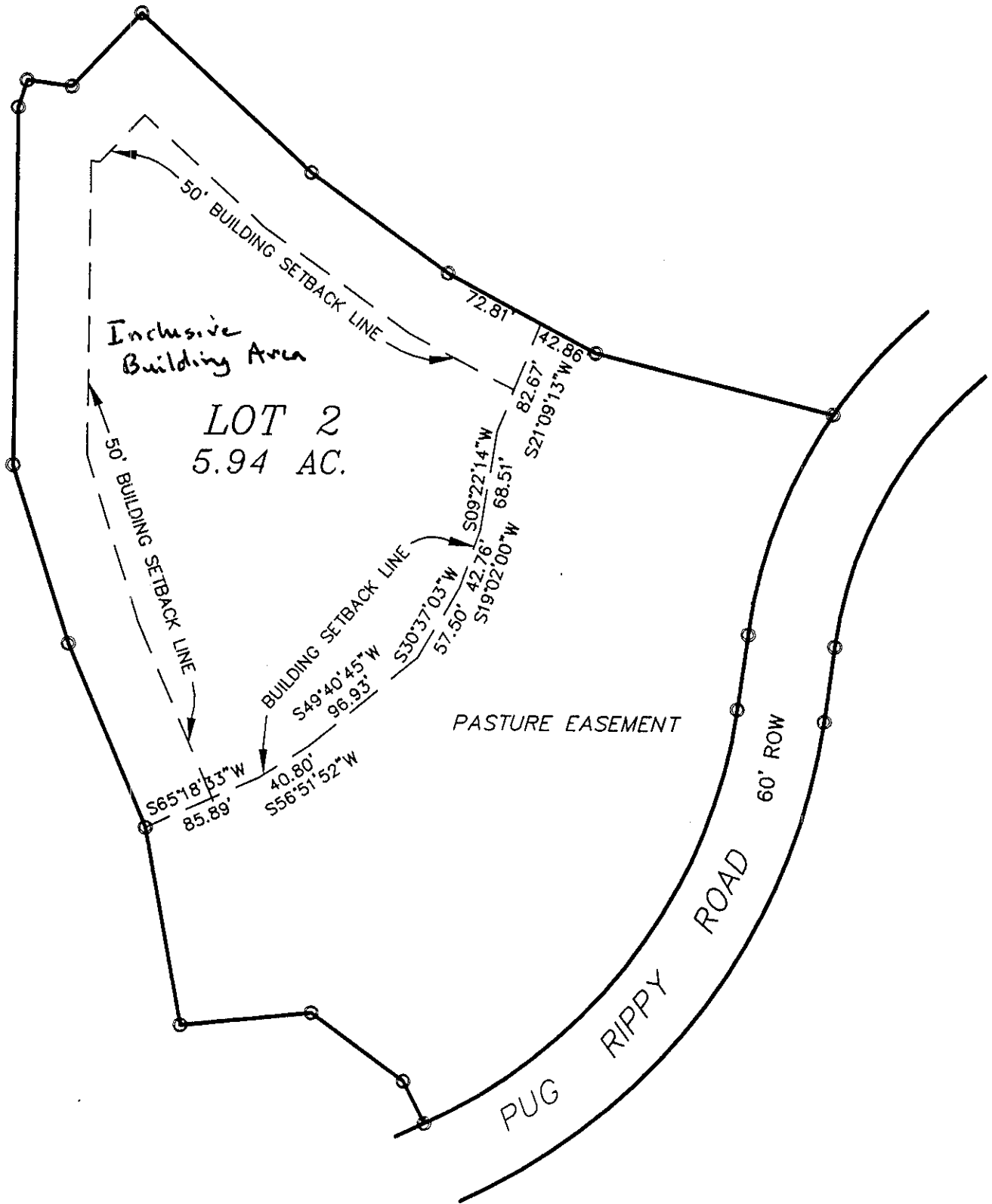
Date: AUGUST 2002

Dr. By: TES

Job #: S02014

DWG #: S02014D1

NORTH  
REF. BEARING: RECORD INFO. 208.10 ACRES



# STAUDT SURVEYING

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"

**LOT 2**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS



PAGE 2 OF 7

Date: APRIL 2002

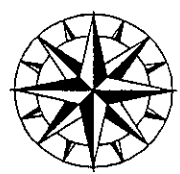
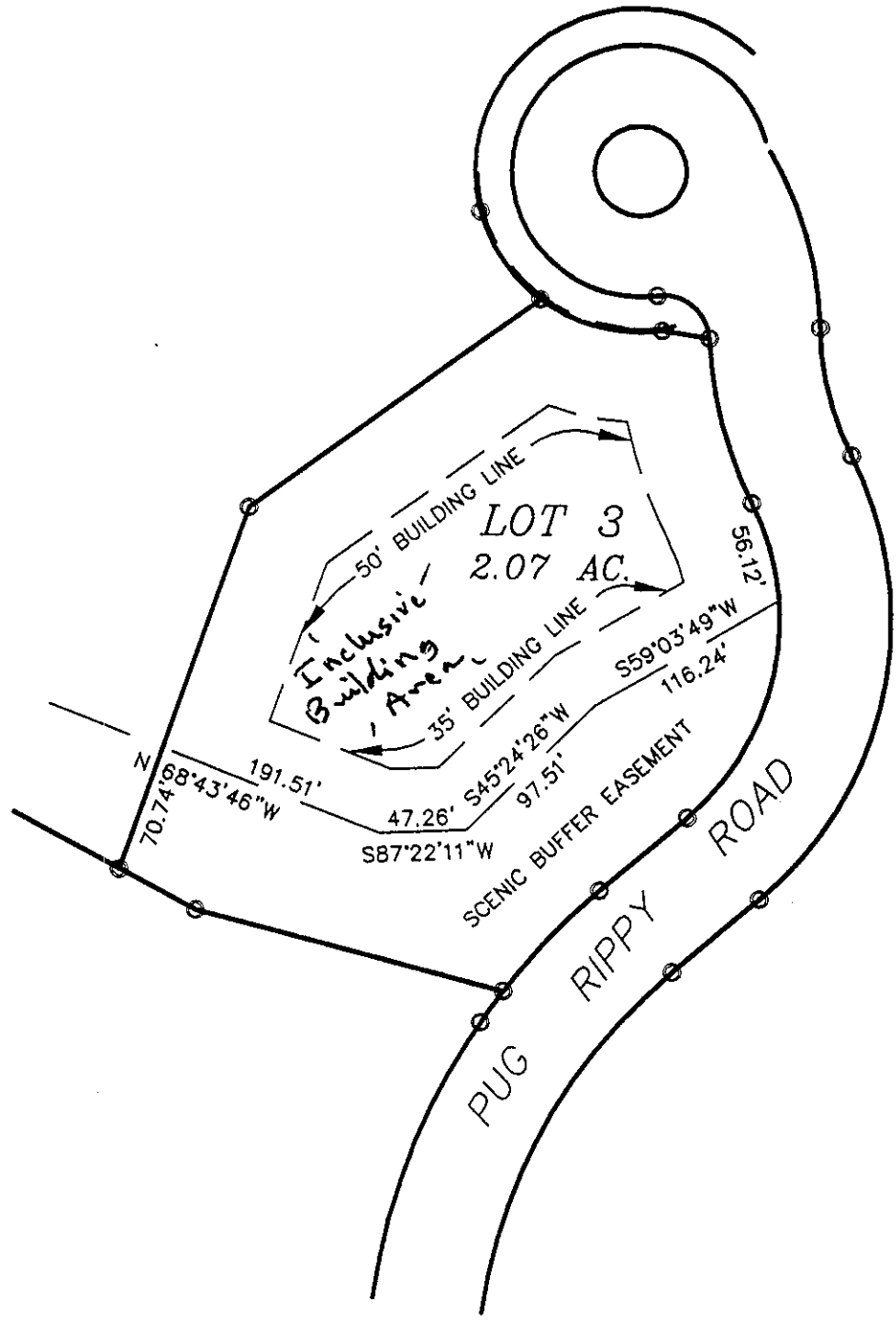
Dr. By: TES

Job #: S02014

DWG #: S02014D1

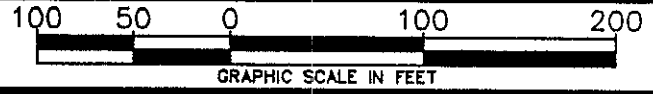


NORTH  
REF. BEARING: RECORD INFO. 208.10 ACRES

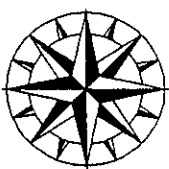
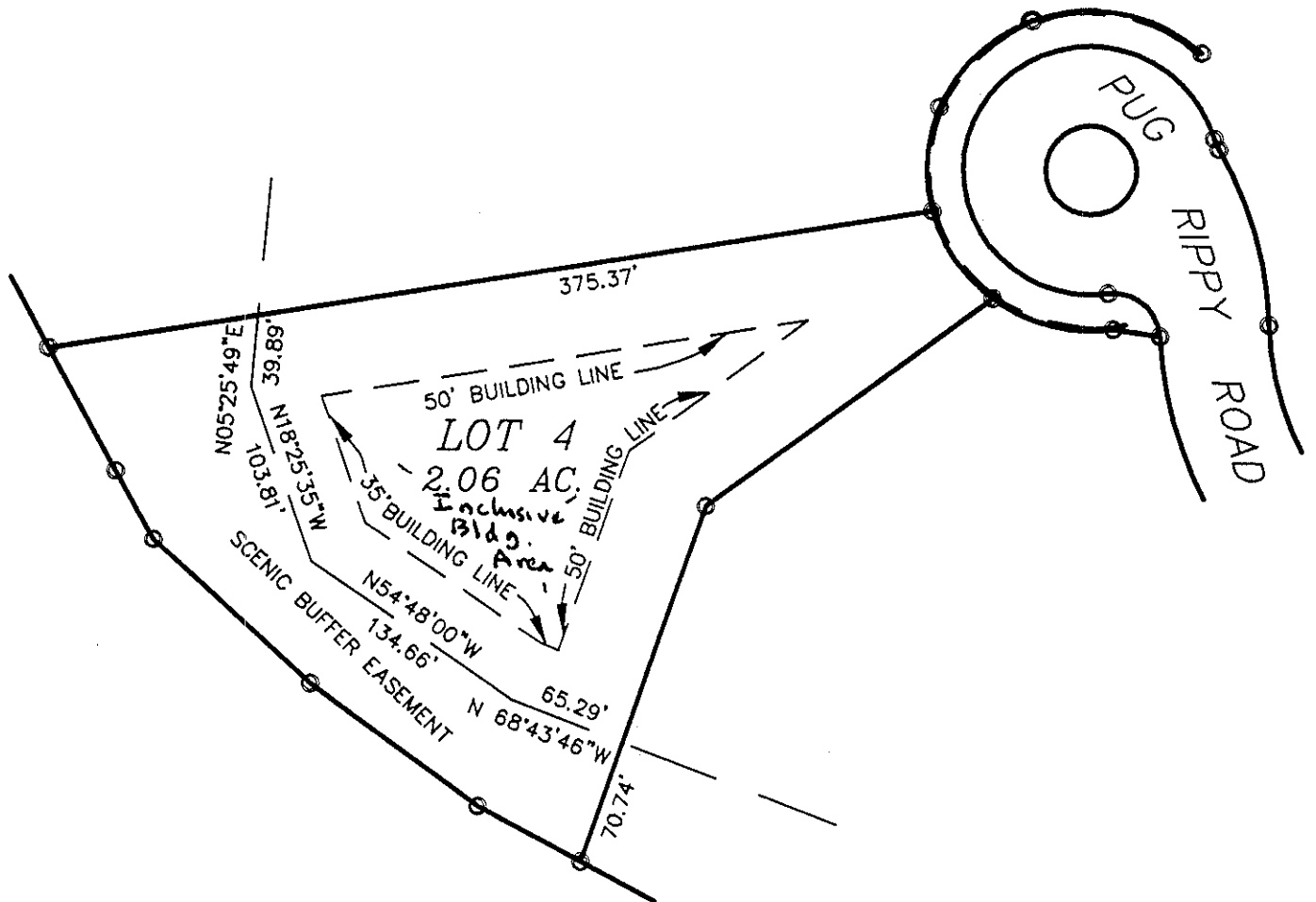


**STAUDT SURVEYING**  
Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"  
**LOT 3**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS



NORTH  
REF. BEARING: RECORD INFO. 208.10 ACRES



**STAUDT SURVEYING**

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"

**LOT 4**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS



PAGE 4 OF 7

Date: APRIL 2002

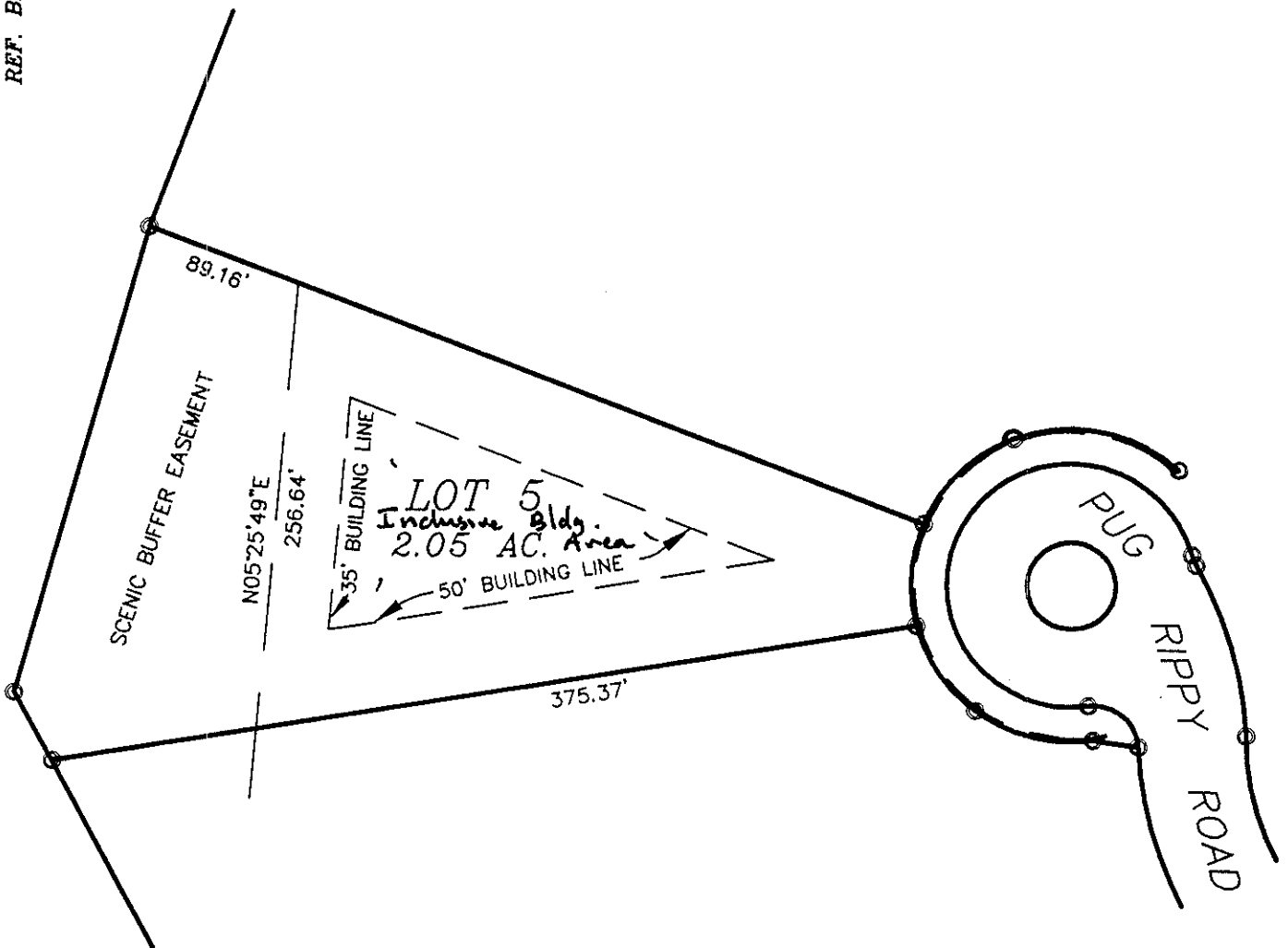
Dr. By: TES

Job #: S02014

DWG #: S02014D1

NORTH

REF. BEARING: RECORD INFO. 208.10 ACRES

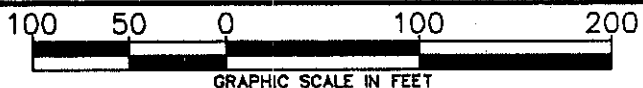


**STAUDT SURVEYING**

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"

**LOT 5**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS



PAGE 5 OF 7

Date: APRIL 2002

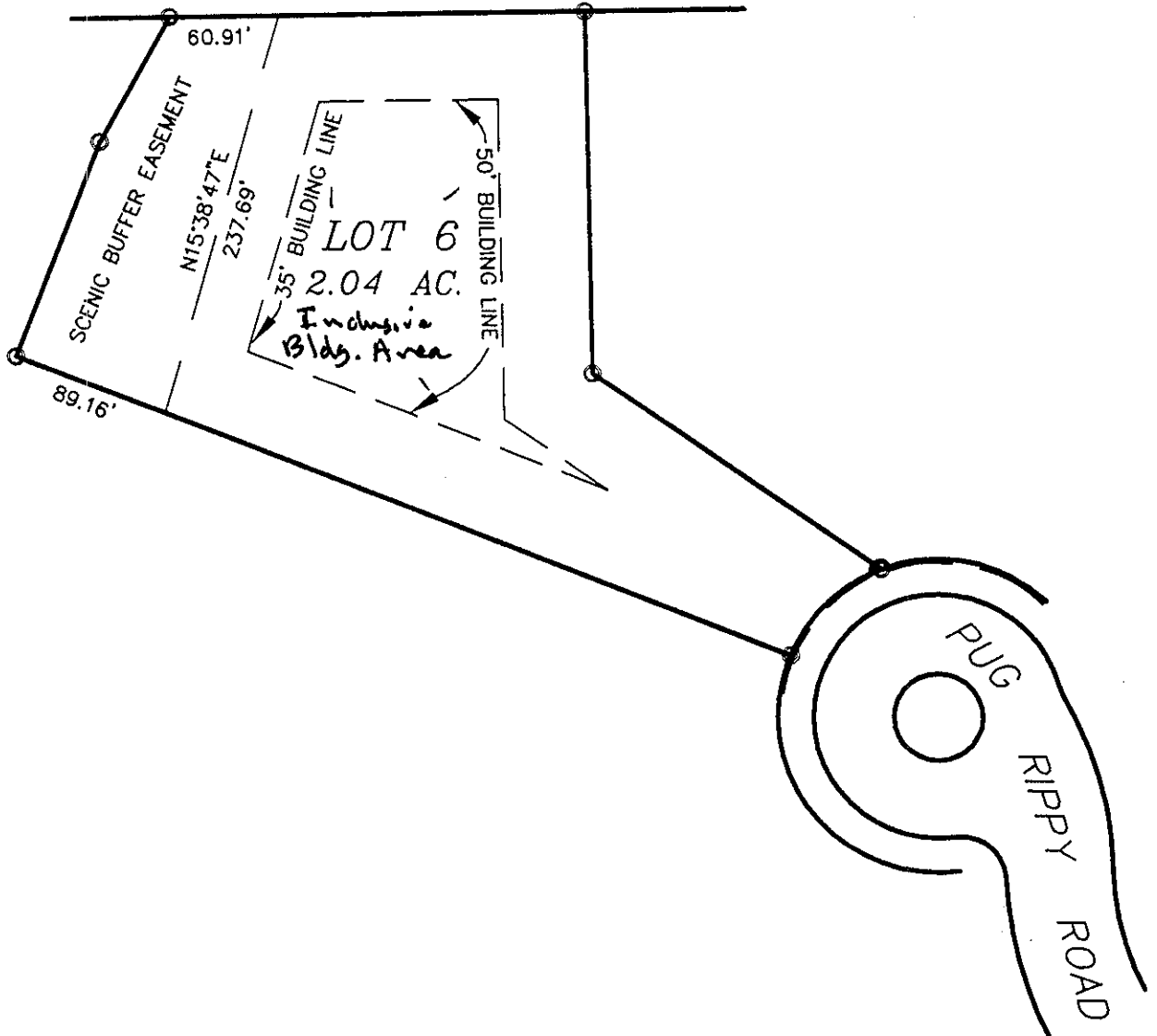
Dr. By: TES

Job #: S02014

DWG # S02014D1

NORTH

REF. BEARING: RECORD INFO. 208.10 ACRES



**STAUDT SURVEYING**

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"

**LOT 6**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS



PAGE 6 OF 7

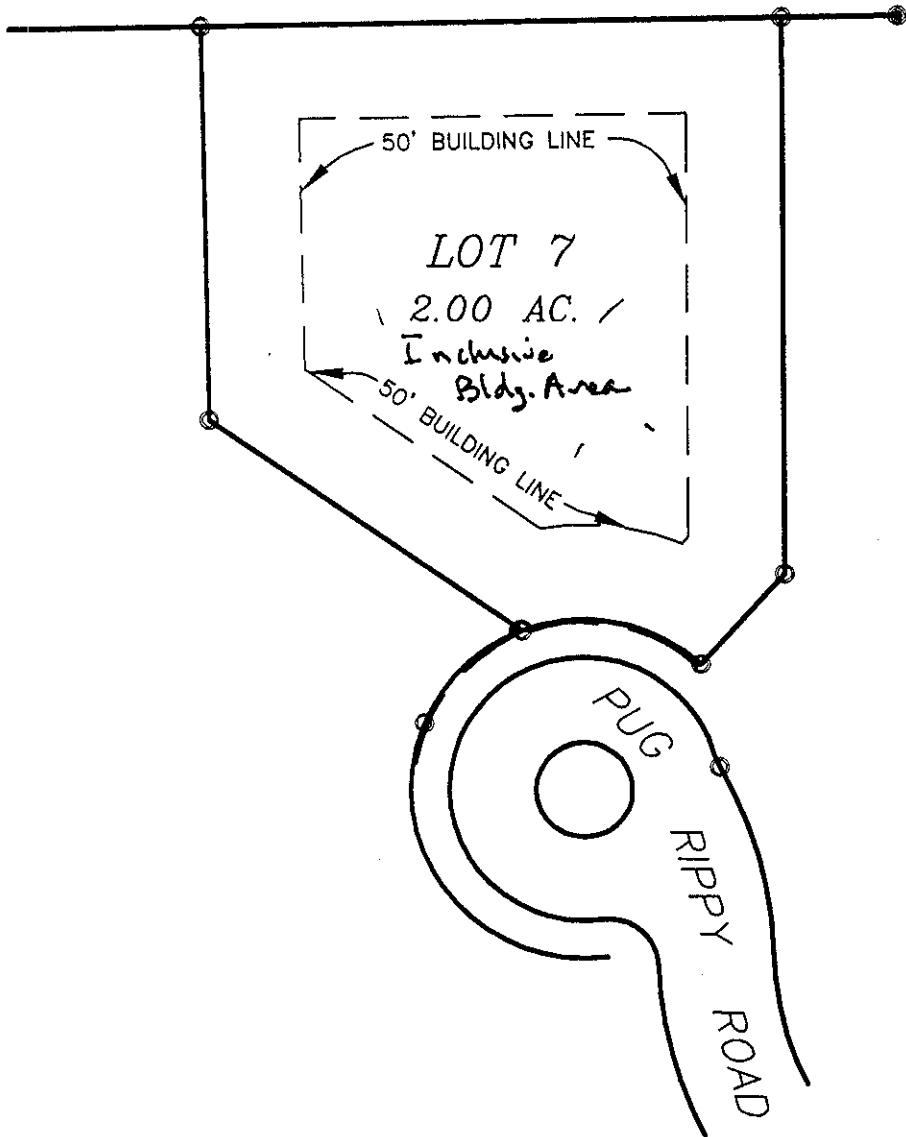
Date: APRIL 2002

Dr. By: TES

Job #: S02014

DWG #: S02014D1

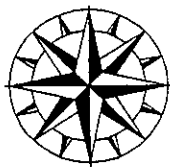
NORTH  
REF. BEARING: RECORD INFO. 208.10 ACRES



FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS  
On: Aug 05, 2002 at 12:19P

Document Number: 02021259  
Amount 81.00

Lee Carlisle  
County Clerk  
By  
Patricia Lackey, Deputy  
Hays County



**STAUDT SURVEYING**

Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2236

PROTECTIVE COVENANTS EXHIBIT "A"  
**LOT 7**  
**CREEK ROAD RANCH**  
**SECTION ONE**  
HAYS COUNTY, TEXAS

