



## Item 17

# Travis County Commissioners Court Agenda Request

**Meeting Date:** March 26, 2013

**Prepared By:** Joe Arriaga **Phone #:** 854-7562

**Division Director/Manager:** Anna Bowlin, Division Director, Development Services and Long Range Planning

**Department Head/Title:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Daugherty, Precinct Three

### **AGENDA LANGUAGE:**

Consider and take appropriate action on the following requests in Precinct Three:

- A) A plat for recording: Bella Colinas, Section 1 - Final Plat (Bella Colinas, Section 1 - Final Plat - 81 single family lots; 1 amenity lot, 5 landscape lots, and 1 private park lot - State Highway 71 - City of Bee Cave ETJ); and
- B) A Subdivision Construction Ageement for Bella Colinas, Section 1.

### **BACKGROUND/SUMMARY OF REQUEST:**

A) This final plat consists of 88 total lots (81 single family residential lots) on 30.56 acres. There are 6,203 linear feet of public streets proposed with this final plat. Water wastewater will be provided by the West Travis County Public Utility Agency. Parkland requirements have been satisfied with the City of Bee Cave as per an agreement. The closest park is located in the City of Bee Cave ETJ. It is part of an approved preliminary plan known as Masonwood Preliminary Plan that was approved by Court on June 6, 2012. Also, the applicant has entered into a Phasing Agreement and has agreed to the following: 1) The dedication of right-of-way, posting of fiscal, and construction of Vail Divide on Lake Travis ISD-owned property from SH 71 to the subdivision's eastern boundary; 2) The posting of fiscal and construction of a private drive providing secondary access to commercial lots fronting on SH 71; 3) The construction of right turn deceleration lanes and acceleration lanes on SH 71, in coordination with TxDOT, for the connection of Vail Divide, Del Mar Drive, and two driveways on SH 71; and 4) At the time of platting the first residential lot, the construction of an emergency access drive that connects to Hamilton Pool Road.

B) The applicant, Meritage Home of Texas, LLP. wishes to enter into a standard subdivision construction agreement with Travis County.

### **STAFF RECOMMENDATIONS:**

As this final plat and agreement meet all Travis County standards and has been approved by the City of Bee Cave and, baring any new information, TNR staff recommends approval.

**ISSUES AND OPPORTUNITIES:**

Staff has not received any inquiries from anyone concerning this final plat.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

N/A

**EXHIBITS/ATTACHMENTS:**

- Location map
- Precinct map
- Proposed final plat
- Subdivision Construction Agreements

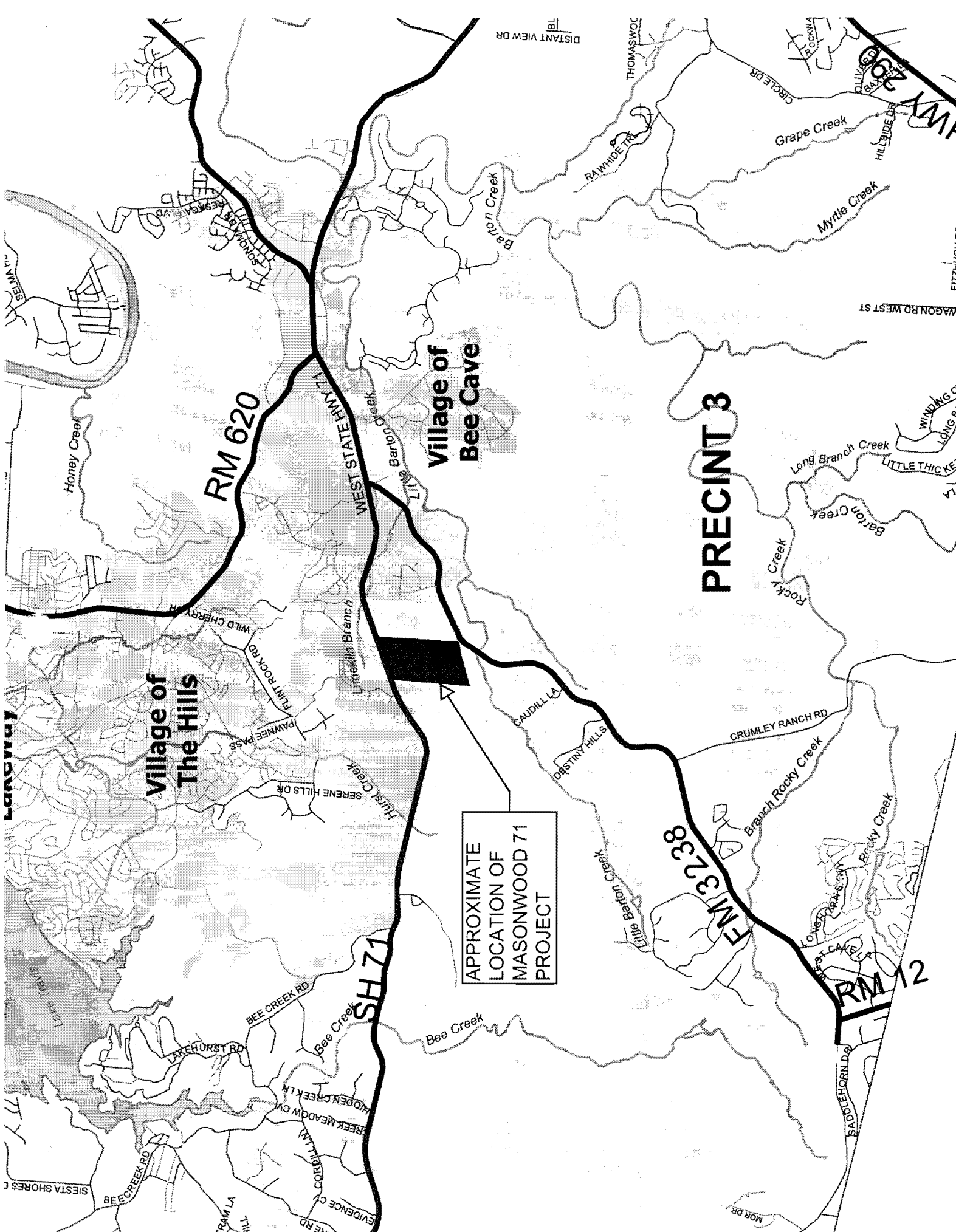
**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

**CC:**


**SM:AB:ja**  
**1101 - Development Services Long Range Planning-**





**Village of Bee Cave**

**Village of The Hills**

**PRECINCT 3**

APPROXIMATE  
LOCATION OF  
MASONWOOD 71  
PROJECT

RM 620

SH 71

FM 3238

RM 12

Honey Creek

Bee Creek

CRUMLEY RANCH RD

Branch Rocky Creek

Rocky Creek

Branch Rocky Creek

Rocky Creek

Branch Rocky Creek

Rocky Creek

Branch Rocky Creek

Rocky Creek

Branch Rocky Creek

Rocky Creek

Grape Creek

Myrtle Creek

Long Branch Creek

Barton Creek

Rocky Creek

CAUDILL LA

CAUDILL LA

DESTINY HILLS

DISTANT VIEW DR

THOMASWOC

RA WHITE TR

CIRCLE DR

HILLSIDE DR

WAGON RD WEST ST

LITTLE THICKET

Long P.

WINGING C

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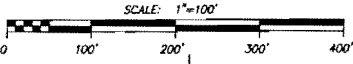
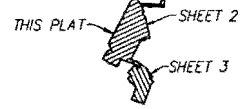
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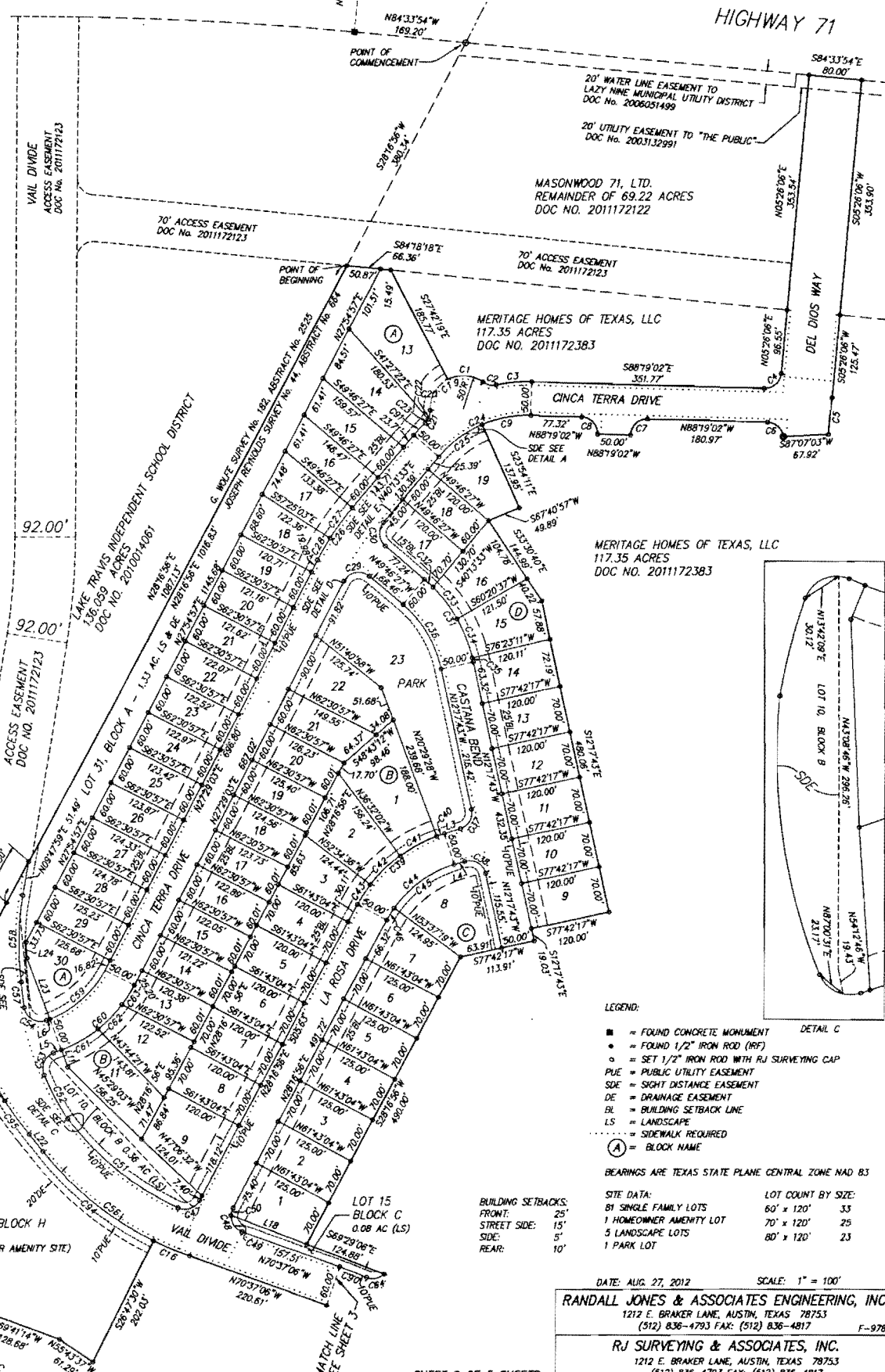
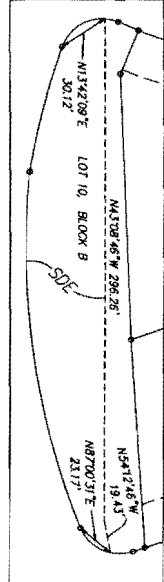
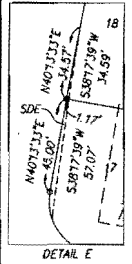
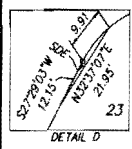
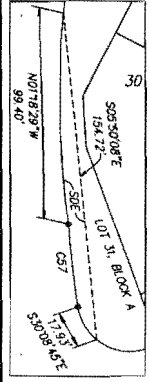
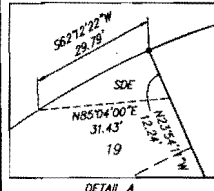
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PLAT OF  
**BELLA COLINAS SECTION 1**  
TRAVIS COUNTY, TEXAS



**HIGHWAY 71**



MERITAGE HOMES OF TEXAS, LLC  
117.35 ACRES  
DOC NO. 2011172383

- LEGEND:**
- = FOUND CONCRETE MONUMENT
  - = FOUND 1/2" IRON ROD (IRF)
  - = SET 1/2" IRON ROD WITH RJ SURVEYING CAP
  - PUE = PUBLIC UTILITY EASEMENT
  - SDE = SHORT DISTANCE EASEMENT
  - DE = DRAINAGE EASEMENT
  - BL = BUILDING SETBACK LINE
  - LS = LANDSCAPE
  - = SIDEWALK REQUIRED
  - (A) = BLOCK NAME

BEARINGS ARE TEXAS STATE PLANE CENTRAL ZONE NAD 83

BUILDING SETBACKS:  
FRONT: 25'  
STREET SIDE: 15'  
SIDE: 5'  
REAR: 10'

**SITE DATA:**

LOT COUNT BY SIZE:	
81 SINGLE FAMILY LOTS	60' x 120'
1 HOMEOWNER AMENITY LOT	70' x 120'
5 LANDSCAPE LOTS	80' x 120'
1 PARK LOT	

DATE: AUG. 27, 2012 SCALE: 1" = 100'

**RANDALL JONES & ASSOCIATES ENGINEERING, INC.**  
1212 E. BRAKER LANE, AUSTIN, TEXAS 78753  
(512) 836-4793 FAX: (512) 836-4817 F-9784

**RJ SURVEYING & ASSOCIATES, INC.**  
1212 E. BRAKER LANE, AUSTIN, TEXAS 78753  
(512) 836-4793 FAX: (512) 836-4817

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PLAT OF  
**BELLA COLINAS SECTION 1**  
TRAVIS COUNTY, TEXAS

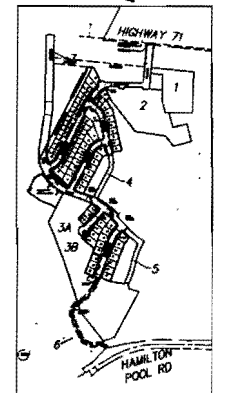
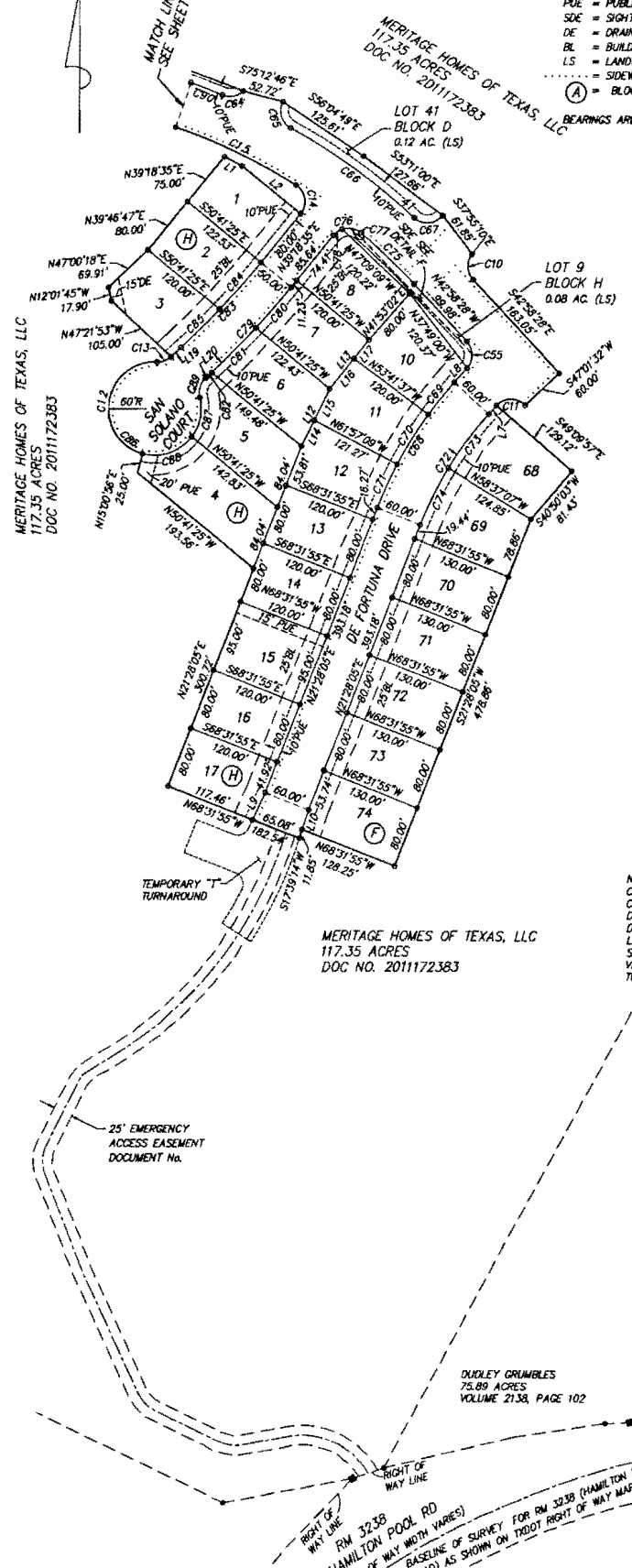
SCALE: 1"=100'

CURVE	LENGTH	RADIUS	DELTA	CHORD BEING	CHORD
C1	56.16	50.00	64.21.31"	S85.31.33"E	53.26
C2	21.24	25.00	48.40.02"	S77.40.49"E	20.60
C3	53.79	225.00	1.34.48"	N84.50.04"E	53.66
C4	37.63	25.00	86.74.52"	N48.33.32"E	34.78
C5	54.55	563.79	5.31.28"	S05.51.35"W	54.53
C6	35.13	25.00	80.31.11"	N48.03.26"W	32.31
C7	39.27	25.00	90.00.00"	S46.40.58"W	35.36
C8	39.27	25.00	90.00.00"	N43.19.02"W	35.36
C9	75.12	175.00	24.35.37"	S79.23.10"W	74.54
C10	35.34	25.00	81.00.00"	S02.28.28"E	32.47
C11	41.45	25.00	95.00.00"	S89.31.32"W	36.86
C12	175.87	60.00	167.56.40"	N08.58.18"E	119.34
C13	19.68	25.00	45.05.57"	N70.24.37"E	19.17
C14	42.36	25.00	97.05.00"	N09.73.59"E	37.47
C15	172.62	770.00	12.50.41"	N6.11.45"W	172.26
C16	59.18	500.00	6.46.54"	N6.71.39"W	59.15
C17	98.64	134.00	42.70.39"	N48.26.20"E	96.43
C18	34.30	25.00	78.37.04"	N71.09.49"W	31.68
C19	112.33	50.00	128.43.02"	N62.71.41"E	90.15
C20	56.16	50.00	64.21.31"	N30.06.56"E	53.26
C21	21.24	25.00	48.40.02"	N22.16.11"E	20.60
C22	13.45	25.00	30.48.57"	N11.20.38"E	13.28
C23	7.79	25.00	17.51.05"	N6.50.40"E	7.76
C24	157.17	175.00	51.27.25"	N65.57.16"E	151.94
C25	82.05	175.00	26.51.48"	N53.39.27"E	81.30
C26	94.46	424.77	12.44.30"	N4.30.18"E	94.27
C27	56.66	424.77	7.38.36"	N36.24.18"E	56.62
C28	37.80	424.77	5.05.54"	N30.02.00"E	37.78
C29	44.83	25.00	102.44.30"	N6.51.18"E	39.06
C30	39.27	25.00	90.00.00"	N04.46.27"W	35.36
C31	147.18	225.00	37.28.44"	N31.02.05"W	144.57
C32	17.78	225.00	4.31.43"	N4.30.35"W	17.78
C33	60.34	225.00	15.21.52"	N37.33.48"W	60.15
C34	62.96	225.00	16.01.56"	N21.51.55"W	62.75
C35	6.10	225.00	1.37.14"	N13.04.20"W	6.10
C36	114.47	175.00	37.28.44"	N31.02.05"W	112.44
C37	37.09	25.00	85.00.00"	N30.12.17"E	33.78
C38	41.45	25.00	95.00.00"	N59.47.43"W	36.86
C39	174.45	225.00	44.25.22"	N50.29.37"E	170.11
C40	12.35	225.00	3.11.45"	N71.06.25"E	12.35
C41	63.00	225.00	16.02.34"	N61.29.15"E	62.79
C42	63.00	225.00	16.02.34"	N45.26.41"E	62.79
C43	35.90	225.00	9.08.28"	N32.51.10"E	35.86
C44	135.68	175.00	44.25.22"	N50.29.37"E	132.31
C45	114.35	175.00	37.28.44"	N5.39.08"E	112.33
C46	21.33	175.00	6.59.00"	N31.46.26"E	21.32
C47	37.67	25.00	86.79.58"	N71.26.54"E	34.21
C48	43.15	25.00	98.54.02"	N21.10.05"W	37.99
C49	31.45	25.00	72.04.18"	N34.34.57"W	29.41
C50	11.71	25.00	26.49.43"	N1.45.20"E	11.60
C51	215.39	440.00	28.02.52"	N51.21.42"W	213.25
C52	75.46	430.42	10.02.40"	N28.21.22"W	75.36
C53	40.52	25.00	92.51.41"	N23.02.49"E	36.23
C54	44.22	25.00	101.20.45"	N59.47.56"W	38.68
C55	37.09	25.00	85.00.00"	N00.28.28"W	33.78
C56	275.29	500.00	31.32.44"	N64.50.44"W	271.82
C57	39.30	430.42	5.13.54"	N06.30.37"W	38.29
C58	132.02	424.00	17.50.22"	N00.52.48"E	131.48
C59	113.74	155.00	42.02.37"	N48.30.21"E	111.20
C60	150.43	205.00	42.02.37"	N48.30.21"E	147.08
C61	64.03	205.00	17.53.46"	N80.34.47"E	63.77
C62	51.43	205.00	14.22.27"	N44.26.40"E	51.29
C63	34.97	205.00	9.46.24"	N32.22.15"E	34.93
C64	28.70	25.00	65.46.39"	N79.29.33"E	27.15
C65	38.92	25.00	89.71.20"	N18.18.44"W	35.10
C66	197.94	830.00	13.39.49"	S54.04.30"E	197.47
C67	41.33	25.00	94.43.53"	S85.23.28"W	36.78
C68	190.16	530.00	20.33.27"	N31.44.49"E	189.14
C69	52.90	530.00	5.43.09"	N39.09.58"E	52.88
C70	76.40	530.00	8.15.32"	N32.10.37"E	76.33
C71	60.86	530.00	6.34.46"	N24.45.28"E	60.83
C72	168.63	470.00	20.33.27"	N31.44.49"E	167.73
C73	87.32	470.00	10.38.39"	N36.54.17"E	87.19
C74	81.32	470.00	9.54.48"	N26.25.20"E	81.22
C75	95.29	770.00	7.05.25"	N45.31.11"W	95.23
C76	39.54	25.00	90.33.31"	N84.31.21"E	35.55
C77	25.96	25.00	59.29.07"	N79.48.27"W	24.81
C78	13.59	25.00	31.08.24"	N54.52.47"E	13.42
C79	157.40	1054.64	6.13.03"	N43.35.07"E	157.25
C80	68.82	1054.64	3.44.19"	N41.10.45"E	68.81
C81	80.45	1054.64	4.22.14"	N45.14.02"E	80.43
C82	8.13	1054.64	0.26.30"	N47.38.24"E	8.13
C83	149.93	1004.64	6.33.03"	N43.35.07"E	149.79
C84	80.08	1004.64	4.34.02"	N41.35.37"E	80.06
C85	69.85	1004.64	3.59.01"	N45.52.08"E	69.83
C86	300.57	60.00	287.01.36"	S50.33.13"W	71.36
C87	53.37	60.00	50.57.45"	N11.24.52"E	51.63
C88	71.33	60.00	68.07.11"	N70.57.20"E	67.21
C89	27.02	25.00	61.55.39"	N16.53.48"E	25.72
C90	43.46	830.00	2.59.59"	N69.07.06"W	43.46
C91	25.04	225.00	6.22.39"	N43.24.53"E	25.03
C92	180.37	499.81	20.40.35"	N21.30.58"W	179.39
C93	243.33	499.81	22.53.41"	N25.07.31"W	240.94
C94	216.11	500.00	24.45.50"	N51.27.17"W	214.43
C95	62.97	499.81	7.13.06"	N35.92.48"W	62.93

BUILDING SETBACKS:  
FRONT: 25'  
STREET SIDE: 15'  
SIDE: 5'  
REAR: 10'

LEGEND:

- = FOUND CONCRETE MONUMENT
- = FOUND 1/2" IRON ROD (RR)
- = SET 1/2" IRON ROD WITH RJ SURVEYING CAP
- PUE = PUBLIC UTILITY EASEMENT
- SDE = SIGHT DISTANCE EASEMENT
- DE = DRAINAGE EASEMENT
- BL = BUILDING SETBACK LINE
- LS = LANDSCAPE
- = SIDEWALK REQUIRED
- (A) = BLOCK NAME

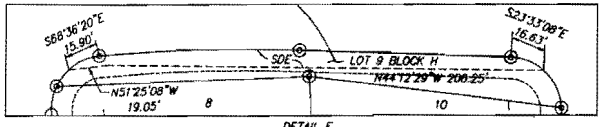


- KEY MAP SHOWING OFFSITE EASEMENTS
- 1 WATER QUALITY  
DOC. No. \_\_\_\_\_
  - 2 WATER QUALITY & DRAINAGE  
DOC. No. \_\_\_\_\_
  - 3A WATER QUALITY, DRAINAGE & UTILITY  
DOC. No. \_\_\_\_\_
  - 3B ACCESS  
DOC. No. \_\_\_\_\_
  - 4 DRAINAGE EASEMENT  
DOC. No. \_\_\_\_\_
  - 5 DRAINAGE EASEMENT  
DOC. No. \_\_\_\_\_
  - 6 ACCESS EASEMENT  
DOC. No. \_\_\_\_\_
  - 7 ACCESS EASEMENT  
DOC. No. 2011172123

NEW STREETS	LENGTH	ROW WIDTH
CINCA TERRA DRIVE	1733	50
CASTAÑA BEND	689	50
DE FORTUNA DRIVE	686	60
DEL DIOS WAY	532	80
LA ROSA DRIVE	781	50
SAN SOLANO COURT	371	50
VALE DIVIDE	1404	60
TOTAL	6203	

LINE	BEARING	LENGTH
L1	S61.46.10"E	26.02'
L2	S50.41.25"E	97.00'
L3	N72.42.17"E	25.21'
L4	N72.42.17"E	16.47'
L5	N69.31.40"E	12.93'
L6	N69.31.40"E	5.52'
L7	N42.01.32"E	14.98'
L8	N42.01.32"E	24.60'
L9	N25.16.56"E	38.17'
L10	N17.39.14"E	26.32'
L11	N20.28.20"W	27.72'
L12	N26.07.09"E	82.17'
L13	N39.10.32"E	80.00'
L14	N26.07.09"E	37.21'
L15	N26.07.09"E	44.96'
L16	N39.10.32"E	49.36'
L17	N39.10.32"E	30.64'
L18	N69.29.06"W	123.44'
L19	N47.51.38"E	17.37'
L20	N47.51.38"E	2.58'
L21	N69.31.40"E	34.39'
L22	N39.04.22"W	32.57'
L23	N20.28.20"W	98.95'
L24	N43.51.06"W	24.15'

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DATE: AUG. 27, 2012  
SCALE: 1" = 100'

RANDALL JONES & ASSOCIATES ENGINEERING, INC.  
1212 E. BRAKER LANE, AUSTIN, TEXAS 78753  
(512) 838-4763 FAX: (512) 838-4817 F-7994

RJ SURVEYING & ASSOCIATES, INC.  
1212 E. BRAKER LANE, AUSTIN, TEXAS 78753  
(512) 838-4763 FAX: (512) 838-4817

**SUBDIVISION CONSTRUCTION AGREEMENT**

STATE OF TEXAS COUNTY OF TRAVIS

This Agreement is made and entered into by and between MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company and MASONWOOD 71, LTD., a Texas limited partnership (collectively, the "Subdivider") and Travis County, Texas, (the "County"), hereinafter collectively referred to as the "Parties".

WHEREAS, the Subdivider owns the tract of real property described in Exhibit "A", which is attached hereto and made a part hereof, (the "Property"); and

WHEREAS, the Subdivider desires to subdivide the Property, pursuant to the proposed final plat of "Bella Colinas Section 1" (the "Subdivision"); and

WHEREAS, the County desires to set forth the Subdivider's responsibility for the construction of the Subdivision's roads and drainage facilities shown in the construction plans, permits, and specifications for the Subdivision (the "Improvements"); and

WHEREAS, the Subdivider desires to set forth the County's responsibility to accept the constructed Improvements for maintenance;

NOW, THEREFORE, the Parties agree as follows:

**I. Subdivider's Obligations**

A. **Improvements.** The Subdivider shall construct the Improvements required to comply with the County's Standards for the Construction of Streets and Drainage in Subdivisions (the "Standards"). The Improvements will conform to the construction plans, permits, and specifications approved by the County prior to commencement of construction.

B. **Security.** To secure the Subdivider's obligations, the Subdivider will provide a financial guarantee of performance in the amount of the estimated cost of constructing the Improvements (the "Security"), which has been determined by a professional engineer and approved by the County's Transportation and Natural Resources Department ("TNR") and which is attached hereto as Exhibit "B". The Security must be in a form approved for use in the Standards or otherwise approved by the County Attorney's Office.

C. **Alternative Fiscal.** Notwithstanding any other provisions of this Agreement, the Subdivider may request the Commissioners Court to hold the administratively approved plat in abeyance until all streets, alleys, sidewalks, and drainage improvements in the Subdivision. The Subdivider must post fiscal security to secure restoration of disturbed areas should construction not be completed. Upon satisfactory completion, the submitted plat shall be forwarded to the Commissioners Court for approval and recording, provided adequate fiscal security has been posted to secure the one year Construction Performance Period described below.

D. Completion. The Improvements must be constructed no later than three (3) years after the effective date of this Agreement. This period may be extended by the delivery to the County at least forty five (45) days prior to the expiration of the Security of an extension of the Security in a form approved by the County. Upon completion of the Improvements, the Subdivider will provide the County with a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

E. Warranty. The Subdivider warrants the public Improvements will be free from defects for a period of one (1) year from the date the County accepts the construction of the public Improvements (the "Performance Period"). The Subdivider shall correct and repair any defects in materials or workmanship, including design inadequacies and damage to or deterioration of the public Improvements, that occur before and during this Performance Period due to any cause. As a condition of the County's acceptance of dedication of any of the public Improvements, the Subdivider must post fiscal security in the form of cash, a performance bond, or other approved form and in the amount of ten percent (10%) of the cost of constructing the public Improvements, to secure the warranty established by this Agreement. It is expressly acknowledged that the public Improvements must meet County Standards at the end of the one year Construction Performance Period in order for the County to release the construction performance fiscal security.

F. Increase in Security. If the County determines the cost of constructing the Improvements exceeds the posted Security, within thirty (30) days after notice and demand, the Subdivider shall provide additional Security in an amount equal to the additional estimated cost.

G. Reduction in Security. During the construction of the Improvements, the Security may be reduced in accordance with the percentage of completion of the construction. The Executive Manager of TNR will execute Statements of Partial Reductions in the Amount of Security, when provided with the following documentation:

- 1) a professional engineer's certification of quantities of work completed;
- 2) a contractor's invoice for work completed; and
- 3) a TNR inspection report, indicating the completion of the portion of the work represented by the contractor's invoice.

After the approval and acceptance of the construction of the Improvements, the Security for the public Improvements may be reduced by ninety percent (90%) of the cost of the approved construction and held for the one-year Performance Period. After the approval of the construction of the private Improvements, the Security posted for the private Improvements will be fully released. In addition, the County agrees to release or reduce, as appropriate, the Security provided by the Subdivider, if the County accepts a substitute Security for all or any portion of the Improvements.

H. Covenant, Restriction, and Condition. In the event that the Improvements are not constructed to County Standards and the required Security has expired, the Subdivider shall not sell, transfer, or convey any of the lots in the Subdivision until sufficient Security has been posted with the County for the completion of the construction.

## II. County's Obligations



A. Inspection and Approval. The County will inspect the Improvements during and at the completion of construction. If the Improvements are completed in accordance with the Standards, the County will approve the Improvements and accept the public Improvements.

B. Notice of Defect. The County will notify the Subdivider, if an inspection reveals that any portion of the Improvements is not constructed in accordance with the Standards or is otherwise defective. However, the County is not responsible for the construction of the Improvements, the quality of the material, or the construction methods utilized. In addition, the County is not responsible for making continuous on-site inspections of the construction work and the County has no privity with or responsibility for the construction contractor or any subcontractors. The Subdivider will have thirty (30) days from such notice to cure the defect. It is an event of default under this Agreement, if the defect is not cured prior to the expiration of the time to cure.

C. Performance Period Security Release. Upon the expiration of the one-year Performance Period with no damages or defects which the Executive Manager notifies the Subdivider must be corrected, the Executive Manager will release the Performance Period Security.

D. Conditions to Draw on Security. The County may draw upon any Security posted under this Agreement upon the occurrence of one or more of the following events:

- a. The failure of the Subdivider to construct the Improvements to the applicable County Standards;
- b. The Subdivider's failure to renew or replace the Security at least forty-five (45) days prior to its expiration;
- c. The acquisition of the Property or a portion of the Property by the issuer of the Security or other creditor through foreclosure or an assignment or conveyance in lieu of foreclosure;
- d. The arrangement by the Commissioners Court for the completion of one or more of the Improvements; or
- e. The determination by the Commissioners Court that the completion of one or more of the public Improvements is in the public Interest.

E. Notice of Intent to Draw. The County shall provide ten (10) days written notice of the occurrence of such an event to the Subdivider with a copy provided to any fiscal surety, lender, or escrow agent. The notice will include a statement that the County intends to provide for the performance of some or all of Subdivider's obligations hereunder for the construction of the Improvements, if the failure is not cured. The County shall be entitled to draw the amount it considers necessary to perform the Subdivider's obligations under this Agreement up to the total amount allocated for the Improvements. In lieu of a drawing based on an event described in subparagraphs (b) or (c), above, the County may accept a substitute Security.

F. Use of Proceeds.

- 1) The County must utilize the proceeds of any posted security solely for the purpose of completing the Improvements to the County's Standards or to correct defects in or failures of the Improvements.
- 2) The County may in its sole discretion complete some or all of the unfinished Improvements at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, without incurring any obligation to complete any of the unfinished Improvements. If the County uses the proceeds to complete, repair, or reconstruct the Improvements, it will do so as a public trustee of the development process in order to protect purchasers and taxpayers from the adverse consequences of a subdivider default or to protect the public interest by completing the Improvements.
- 3) The County is not a private subdivision developer and its draft on the Security and utilization of the proceeds to complete, repair, or reconstruct the Improvements is not an acceptance of the dedication of the Improvements. The acceptance of the Improvements is specifically contingent upon the delivery to the County of Improvements, which have been constructed to County Standards or the express order of acceptance by the County's Commissioners Court.
- 4) The Subdivider has no claim or rights under this Agreement to funds drawn under the Security or any accrued interest earned on the funds to the extent the same are used by the County hereunder.
- 5) All funds obtained by the County pursuant to one or more draws under the Security shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the "Escrowed Funds"), are disbursed by the County.
- 6) The County shall disperse all or portions of the Escrowed Funds as Improvements are completed by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of the Improvements.
- 7) Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with any interest accrued thereon, shall be paid by the County to the Issuer of the Security or, if the Security was originally in the form of cash, to the Subdivider, no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvements using Escrowed Funds, whichever date is earlier.

G. Releases. The Executive Manager will, subject to the performance of the Subdivider of its obligations under this agreement and the Travis County Standards for Construction of Streets & Drainage in Subdivisions, execute such releases of this Agreement as are necessary and reasonable upon the request of the Subdivider or a purchaser of a portion of the Property.

### III. MISCELLANEOUS

A. Covenants, Restrictions, and Conditions. These Covenants, Restrictions, and Conditions will operate as covenants running with the land and will be binding upon the Subdivider and the Subdivider's legal representatives, successors and assigns.

B. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the actual cost of completing the Improvements in conformance with the County's Standards, including without limitation its associated administrative expenses.

C. Remedies. The remedies available to the County and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

D. Third Party Rights. No non-party shall have any right of action under this Agreement, nor shall any such non-party, including without limitation a trustee in bankruptcy, have any interest in or claim to funds drawn on the posted Security and held in escrow by the County in accordance with this Agreement.

E. Indemnification. The Subdivider shall indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees, for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County, if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements.

F. No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The County's failure to enforce any provision will not constitute a waiver or estoppel of the right to do so.

G. Attorney's Fees. The prevailing party in any litigation hereunder is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs.

H. Successors and Assigns. This Agreement is binding on the Subdivider and the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the written approval of the County; provided the County's approval shall not be unreasonably withheld if the Subdivider's assignee expressly assumes all obligations of the Subdivider under this Agreement. An assignment shall not be construed as releasing the Subdivider from Subdivider's obligations under this Agreement and Subdivider's obligations hereunder shall continue notwithstanding any assignment approved pursuant to this Paragraph unless and until the County executes and delivers to the Subdivider a written release. The County agrees to release the Subdivider, if the Subdivider's assignee expressly assumes the Subdivider's obligations under this Agreement and has posted the Security required by this Agreement. The County in its sole discretion may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Subdivider.

I. Expiration. This Agreement will terminate upon the vacation of the Subdivision by the Subdivider or the completion of the Subdivider's obligations under this Agreement, whichever occurs first.

J. Notice. Any notice under this Agreement must be in writing and will be effective when personally delivered or three (3) days after deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed as follows:

Subdivider: Meritage Homes of Texas, LLC  
8920 Business Park Drive, Suite 250  
Austin TX 78759  
Attention: Dale Thornton

Masonwood 71, Ltd.  
1004 Mopac Circle, Suite 201  
Austin, Texas 78746  
Jim Meredith

County: Transportation & Natural Resources Department  
P.O. Box 1748 Austin, Texas 78767  
Attn: Executive Manager

Copy to: Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

The parties may change their respective addresses for notice to any other location in the United States in accordance with the provisions of this Paragraph.

K. Severability. If any provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other provision and the rights of the parties will be construed as if such provision was never part of this Agreement.

L. Jurisdiction and Venue. This Agreement concerns real property located in Travis County, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Travis County, Texas.

M. Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

N. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect, except a subsequent written modification executed by both parties. **NO OFFICIAL, EMPLOYEE, OR AGENT OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, MODIFY, OR OTHERWISE CHANGE THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.**

This Agreement is executed as of the dates set forth below and is effective upon approval by the County of the final plat for the Subdivision or upon approval of Alternative Fiscal in accordance with County regulations.

TRAVIS COUNTY, TEXAS

SUBDIVIDER:

MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company

\_\_\_\_\_  
County Judge

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Dale Thomas

Title: VP of Asset Development

Authorized Representative

Date: 1/10/2013

MASONWOOD, 71 LTD., a Texas limited partnership

By: Masonwood 71 GP, LLC, a Texas limited liability company its general partner:

By: \_\_\_\_\_

Name: Sue Mearns

Title: Man. Partner

Authorized Representative

Date: 1/7/13

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, in the capacity stated herein.

\_\_\_\_\_  
Signature of Notary

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 10<sup>th</sup> day of January, 2013, by Dale Thornton, VP of Land Development in the capacity stated herein.



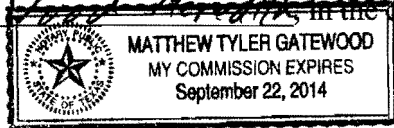
Meggie Weirich  
Signature of Notary

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 7 day of January, 2012, by James Tyler Gatewood in the capacity stated herein.



Matthew Tyler Gatewood  
Signature of Notary

After Recording Return to:  
Executive Manager,  
Transportation and Natural Resources  
P.O. Box 1748  
Austin, Texas 78701

## **EXHIBIT "A"**

The Property consists of two parent parcels ("Parcel 1" and "Parcel 2") bought by Masonwood 71, Ltd., a portion of which was sold to Meritage Homes of Texas, LLC ("Parcel 3"). The parcels are described as follows:

### **PARCEL 1**

A PARCEL OF LAND IN TRAVIS COUNTY, TEXAS, BEING A PART OF THE J. REYNOLDS SURVEY No. 44, AND BEING ALL OF THAT TRACT OF LAND SAID TO CONTAIN 75 ACRES CONVEYED TO ROBERT WELDON GRUMBLES BY DEED RECORDED IN DOCUMENT No. 2007217320 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN at a 1/2" iron rod set at Texas State Plane Central Zone coordinates N=10087110.80 feet and E=3035132.80 feet in the South Line of Highway 71 (a right of way 150 feet wide at this point) at its intersection with the West Line of the said J. Reynolds Survey, the same being the Northwest Corner of the said 75 Acre Tract and the Northeast Corner of that 136.059 Acre Tract conveyed to Lake Travis Independent School District by deed recorded in Document No. 2010014061 of the Official Public Records of Travis County, Texas, from which point a concrete right of way monument bears N.84°33'54"W., 169.20 feet;

THENCE S.84°33'54"E., along the South Line of Highway 71 and the North Line of the said 75 Acre Tract, a distance of 939.18 feet to a 1/2" iron rod set at the Northeast Corner of the 75 Acre Tract and the Northwest Corner of that 78.04 Acre Tract conveyed to Aubrey Eldon Grumbles by deed recorded in document No. 2007217321 of the Official Public Records of Travis County, Texas;

THENCE S.27°57'11"W., along the East Line of the 75 Acre Tract and the West Line of the 78.04 Acre Tract, a distance of 3686.62 feet to a 1/2" iron rod set in a fence at the Southeast Corner of the 75 Acre Tract and the Southeast Corner of the 78.04 Acre Tract;

THENCE N.62°41'03"W., along the South Line of the said 75 Acre Tract, the North Line of that 5.5 Acre Tract conveyed to Philip Cook by deed recorded in Volume 11766, Page 129 of the Real Property Records of Travis County, Texas, and along a fence, a distance of 700.17 feet to a large cedar fence post;

THENCE N.01°19'47"E., along the fence, the same being the common Line of the 75 Acre Tract and the 5.403 Acre Tract, a distance of 223.18 feet to a large cedar fence post at the Southeast Corner of the said 136.059 Acre Tract conveyed to Lake Travis Independent School District;

THENCE along the West Line of the 75 Acre Tract, the East Line of the said 136.059 Acre Tract, and along the fence, the following five courses:

1. N.18°31'36"E. a distance of 298.33 feet to a 1/2" iron rod with "Delta Surveying" cap;

2. N.25°36'46"E. a distance of 291.24 feet to a 1/2" iron rod with "Delta Surveying" cap;
3. N.26°43'33"E. a distance of 341.43 feet to a spindle found;
4. N.27°21'01"E. a distance of 741.15 feet to a 1/2" iron rod with "Delta Surveying" cap;
5. N.28°16'56"E. a distance of 1467.47 feet to the said Point of Beginning.

Containing 69.22 acres, more or less.

**PARCEL 2**

A PARCEL OF LAND IN TRAVIS COUNTY, TEXAS, BEING A PART OF THE J. REYNOLDS SURVEY No. 44, BEING ALL OF THAT 78.04 ACRE TRACT OF LAND CONVEYED TO AUBREY ELDON GRUMBLES BY DEED RECORDED IN DOCUMENT No. 2007217321 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN at a 1/2" iron rod set at Texas State Plane Coordinates Central Zone N=10087021.85 and E=3036067.76 in the South Right of Way Line of Highway No. 71 ( a right of way 150 feet wide at this point) at the Northeast Corner of that 74 Acre Tract conveyed to Artie Grumbles by deed recorded in Volume 1951, Page 246 of the Travis County Deed Records, and at the Northwest Corner of the said 78.04 Acre Tract, from which point a concrete right of way monument bears N.84°33'54"W., 1108.38 feet and the Northwest Corner of the said 74 Acre Tract bears N.84°33'54"W., 939.18 feet;

THENCE S.84°33'54"E., along the South Line of Highway 71 and the North Line of the 78.04 Acre Tract, at 696.34 feet pass a concrete right of way monument, in all a distance of 776.38 feet, to a 1/2" iron rod set at the Northwest Corner of that one acre tract described as the save and except rectangular square of land being 210 feet in length on each side

THENCE S.28°21'04"W., along the West Line of the One Acre Tract, a distance of 210.00 feet to a 1/2" iron rod set at the Southwest Corner of said One Acre Tract;

THENCE S.84°33'54"E., along the South Line of the One Acre Tract, a distance of 210.00 feet to a 1/2" iron rod set at the Southeast Corner of said One Acre Tract and to a point in the East Line of the said 78.04 Acre Tract;

THENCE S.28°21'04"W., along said East Line, a distance of 3697.19 feet to a 1/2" iron rod found in the North Line of R. M. 3238 (Hamilton Pool Road) at the Southeast Corner of said 78.04 Acre Tract;

THENCE S.71°44'33"W., along the South Line of the said 78.04 Acre Tract and the North Line of R. M. 3238, a distance of 42.97 feet to a concrete right of way monument found;

THENCE S.79°33'37"W., along the South Line of the said 78.04 Acre Tract, the North Line of that 5.5 Acre Tract conveyed to Philip Cook by deed recorded in Volume 11766, Page 129 of the Real Property Records of Travis County, Texas, and along a fence, a distance of 170.29 feet to a large cedar fence post;



THENCE along the South Line of the said 78.04 Acre Tract and the North Line of the 5.5 Acre Tract, the following two courses:

1. N.64°34'26"W. a distance of 353.45 feet to a large cedar fence post;
2. N.62°48'55"W. a distance of 367.77 feet to a 1/2" iron rod set in the fence at the Southwest Corner of the 78.04 Acre Tract and the Southeast Corner of the said 74 Acre Tract;

THENCE N.27°57'11"E., along the West Line of the 78.04 Acre Tract and the East Line of the 74 Acre Tract, a distance of 3686.62 feet to the said Point of Beginning.

Containing 78.37 acres, more or less.

### PARCEL 3

A PARCEL OF LAND IN TRAVIS COUNTY, TEXAS, BEING A PART OF THE J. REYNOLDS SURVEY No. 44, AND BEING A PART OF THAT TRACT OF LAND SAID TO CONTAIN 75 ACRES CONVEYED TO ROBERT WELDON GRUMBLES BY DEED RECORDED IN DOCUMENT No. 2007217320 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND A PART OF THAT 78.04 ACRE TRACT OF LAND CONVEYED TO AUBREY ELDON GRUMBLES BY DEED RECORDED IN DOCUMENT No. 2007217321 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at a 1/2" iron rod set at Texas State Plane Central Zone coordinates N=10087110.80 feet and E=3035132.80 feet in the South Line of Highway 71 (a right of way 150 feet wide at this point) at its intersection with the West Line of the said J. Reynolds Survey, the same being the Northwest Corner of the said 75 Acre Tract and the Northeast Corner of that 136.059 Acre Tract conveyed to Lake Travis Independent School District by deed recorded in Document No. 2010014061 of the Official Public Records of Travis County, Texas, from which point a concrete right of way monument bears N.84°33'54"W., 169.20 feet;

THENCE S.28°16'56"W., along the West Line of the 75 Acre Tract and the East Line of the 136.059 Acre Tract, a distance of 380.34 feet to the Point of Beginning;

THENCE across the said 75 Acre Tract the following two courses:

1. S.84°18'18"E. a distance of 934.83 feet;
2. S.04°56'26"W. (at 11.73 feet pass the common line of the 75 Acre Tract and the 78.04 Acre Tract), in all a distance of 244.53 feet;

THENCE continue across the said 78.04 Acre Tract the following two courses:

1. S.14°19'12"E. a distance of 715.60 feet;
2. S.53°03'12"E. a distance of 331.99 feet to the East Line of the said 78.04 Acre Tract (from which point a 1/2" iron rod set in said East Line bears N.28°21'04"E., 1360.19 feet);

THENCE along said East Line the following two courses:

1. S.28°21'04"W. a distance of 72.43 feet to a 1/2" iron rod found;
2. S.28°21'04"W. a distance of 2264.57 feet to a 1/2" iron rod found in the North Line of R. M. 3238 (Hamilton Pool Road) at the Southeast Corner of said 78.04 Acre Tract;

THENCE S.71°44'33"W., along the South Line of the said 78.04 Acre Tract and the North Line of R. M. 3238, a distance of 42.97 feet to a concrete right of way monument found;

THENCE S.79°33'37"W., along the South Line of the said 78.04 Acre Tract, the North Line of that 5.5 Acre Tract conveyed to Philip Cook by deed recorded in Volume 11766, Page 129 of the

Real Property Records of Travis County, Texas, and along a fence, a distance of 170.29 feet to a large cedar fence post;

THENCE along the South Line of the said 78.04 Acre Tract and the North Line of the 5.5 Acre Tract, the following two courses:

1. N.64°34'26"W. a distance of 353.45 feet to a large cedar fence post;
2. N.62°48'55"W. a distance of 367.77 feet to a 1/2" iron rod set in the fence at the Southwest Corner of the 78.04 Acre Tract and the Southeast Corner of the said 75 Acre Tract;

THENCE N.62°41'03"W., along the South Line of the said 75 Acre Tract, the North Line of the said 5.5 Acre Tract and along a fence, a distance of 700.17 feet to a large cedar fence post;

THENCE N.01°19'47"E., along the fence, the same being the common Line of the 75 Acre Tract and the 5.5 Acre Tract, a distance of 223.18 feet to a large cedar fence post at the Southeast Corner of the said 136.059 Acre Tract conveyed to Lake Travis Independent School District;

THENCE along the West Line of the 75 Acre Tract, the East Line of the said 136.059 Acre Tract, and along the fence, the following five courses:

1. N.18°31'36"E. a distance of 298.33 feet to a 1/2" iron rod found with "Delta Surveying" cap;
2. N.25°36'46"E. a distance of 291.24 feet to a 1/2" iron rod found with "Delta Surveying" cap;
3. N.26°43'33"E. a distance of 341.43 feet to a spindle found;
4. N.27°21'01"E. a distance of 741.15 feet to a 1/2" iron rod found with "Delta Surveying" cap;
5. N.28°16'56"E. a distance of 1087.13 feet to the said Point of Beginning.

Containing 117.35 acres, more or less.