

Easement Agreement for Drainage Easement

Date:

Grantors: Lennar Homes of Texas Land and Construction, Ltd.

Grantor's Mailing Address: 12301 Research Boulevard, Bldg. 4, Suite 450
Austin, Texas 78759

Grantee/Holder: City of Buda, Hays County, Texas

Grantee's Mailing Address: 121 Main Street, Buda, Texas

Dominant Estate: A portion of the 188.387 acres of land conveyed to Lennar Homes of Texas Land and Construction, Ltd. in special warranty deed recorded in Volume 3405, Page 655 of the Official Public Records of Hays County, Texas.

Easement Property: All that certain tract, piece or parcel of land, lying and being situated in the County of Hays, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property.

Easement Purpose: For the installation, construction, maintenance, replacement, repair, and upgrade of storm sewer, storm inlets and/or drainage ditches.

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: None.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty to the extent that such claim arises by, through, or under Grantor but not otherwise.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easements referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and

irrevocable. The Easement is for the benefit of Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.

1. *Duration of easement.* The duration of the Easement is perpetual, unless and until it is relinquished or abandoned by ordinance.
2. *Reservation of Rights.* Holder's right to use the Easement Property in nonexclusive, and Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, or construct any building, structure or obstruction. The right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.
3. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.
4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the facilities. Grantee will replace the fence to original condition on the completion of work. If the fence was constructed after this easement agreement, replacement shall be at the expense of the grantor.
5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
6. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
7. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. - *Counterparts*. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
10. *Waiver of Default*. It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
11. *Further Assurances*. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
12. *Integration*. This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
13. *Legal Construction*. If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
14. *Notices*. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
15. *Recitals*. Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

Grantor:
Lennar Homes of Texas Land and Construction, Ltd.



Fred Wyborski, Vice President

City of Buda, by its City Manager, Kenneth Williams

ACKNOWLEDGMENTS

STATE OF TEXAS)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on the 8 day of February, 2013, by Fred Wyborski, Vice President of Lennar Homes of Texas Land and Construction, Ltd., on behalf of said partnership.



Laurie Stephenson
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF HAYS)

This instrument was acknowledged before me on the _____ day of _____, 20____, by Kenneth Williams, City Manager of the City of Buda, on behalf of said city.

Notary Public, State of Texas