

Private Streets are to be considered to be public streets for the purposes of the application and enforcement of specified traffic rules; and

WHEREAS, the Owners and the Association acknowledge that if the City Council chooses to act on this Petition, the Owners and the Association may be required to enter into an agreement in the form of the Traffic Enforcement Agreement (Berry Creek) set forth on Exhibit "A" attached hereto and incorporated herein for all purposes (the "Agreement"), as such form may be amended following City Council's receipt and review of this Petition, with the City setting forth the terms and conditions upon which the traffic rules that apply in the City shall apply in Berry Creek, and in that event, said agreement shall be an exhibit to the Ordinance.

NOW, THEREFORE, this Petition is submitted to comply with the Statute and to request that the City Council accept the Petition and find that it is in the best interest of the City to draft and approve an ordinance authorizing the City to apply the City's traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to the Private Streets.

PETITION

Pursuant to the Statute, the Owners and the Association petition the City as follows:

1. General Nature of Requested Service:

The Owners and the Association petition the City to direct the City's Police Department to provide law enforcement to Berry Creek for the purposes of patrol, enforcement of traffic control, and laws related to operation of motor vehicles, investigation of criminal activity, and deterrence of criminal activity in the violation of City and State laws within the jurisdiction of the City's Police Department for the health, safety, and welfare of the City citizens residing in Berry Creek.

2. Satisfaction of Conditions Precedent:

- (a) The Statute applies to a subdivision in which the roads are privately owned or maintained. The Private Streets are privately owned and maintained by the Association.
- (b) The Statute applies to a municipality with a population of three hundred (300) or more, and the City is a municipality with a population of more than three hundred (300).
- (c) The Statute requires this Petition be made by either at least twenty-five percent (25%) of the property owners residing in Berry Creek or the governing body of the entity that maintains the Private Streets. The Owners and the Association have jointly submitted this Petition. Each Owner executing this Agreement covenants that he/she is the legal fee simple owner (and not a renter)

of the property address listed by his/her name on the signature pages to this Agreement.

3. Municipality May Extend Services:

The Statute provides that the governing body of the municipality may extend by ordinance any traffic rules that apply to a road owned by the municipality, or by the county in which the municipality is located, to the roads in the subdivision so that the roads of the subdivision, such as Berry Creek, are under the same traffic rules, if the governing body of the municipality finds the ordinance in the interest of the municipality generally.

4. Traffic Rules Sought to Be Extended:

The Owners and the Association seek to extend all traffic rules of City thoroughfares similar to those within Berry Creek to the Private Streets, including, but not limited to:

- (a) Speed limit of 20 mph.
- (b) Vehicle registration and inspection laws; and
- (c) Traffic rules and laws regarding speed, signal indicators, stop signs, parking, and similar traffic laws.

In compliance with the Statute, this Petition specifies the traffic rules that are sought to be extended. The Owners and the Association request that the City extend all of such requested rules to the Private Streets for the safety, health, and welfare of the City's citizens residing in Berry Creek.

5. Traffic Enforcement Agreement:

The Owners and the Association desire to enter into the Agreement with the City.

6. Lack of Necessity for Payment of Costs of Police Service:

The Owners and the Association seek no different enforcement or service than that made available and provided to all other citizens and taxpayers of the City, and pursuant to the Statute. While the City may require that owners of property in the subdivision pay all or part of the cost of extending and enforcing the traffic rules in the subdivision, there should be no additional cost than that borne for any other citizen. Accordingly, the Association petitions that no additional charges be imposed for the provision of the police service in accordance with the agreement between the Association and the City.

7. Proposed Method of Enforcement:

If the City Council passes an Ordinance, the Owners and the Association acknowledge that the Private Streets will be considered to be public streets for purposes of the application and

enforcement of the specified traffic rules. The Owners and the Association will comply with all City requests for placement of necessary official traffic control devices on property abutting the Private Streets if those devices relate to a specified traffic rule and are either located on property owned by the Association or one of the Owners, the consent of the owner of that property (if not owned by the Association or one of the Owners) is obtained, or an easement is available for the placement of the device.

8. Execution:

This Petition is made and executed by the Owners and an authorized representative of the Association.

9. Submission of Petition:

This Petition will be filed with the City Secretary's office. The Owners and the Association submit this Petition and request that the City Council grant all matters requested herein and pass an appropriate ordinance of the City consistent with this Petition and the laws of the State of Texas and the City.

[The remainder of this page intentionally left blank]

**ASSOCIATION
SIGNATURE PAGE
TO
PETITION FOR CITY OF SCHERTZ POLICE
PATROL AND ENFORCEMENT
IN GATED COMMUNITY OF BERRY CREEK**

The undersigned has executed this instrument as of the date of the acknowledgement below.

ASSOCIATION:

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF

This instrument was acknowledged before me on the _____ day of _____, 2013 by _____, the _____ of _____, a _____, on behalf of said _____.

(SEAL)

Notary Public in and for The State of Texas

My Commission Expires: _____

EXHIBIT "A"

TRAFFIC ENFORCEMENT AGREEMENT (Berry Creek)

This Traffic Enforcement Agreement (Berry Creek) (the "Agreement") among the City of Schertz, Texas, a Texas Municipal Corporation (the "City"), Berry Creek Home Owner's Association (the "Association"), and the undersigned parties, which parties represent at least twenty-five percent (25%) of the property owners residing in Berry Creek, as hereinafter defined (collectively, the "Owners"), is entered into as of the date of the final signature of the parties (the "Effective Date").

WITNESSETH:

WHEREAS Berry Creek ("Berry Creek") is a private gated community in the City of Schertz, Guadalupe County, Texas, generally located at Berry Creek Dr and containing a total of One Hundred Twenty (120) residences; and

WHEREAS the Association is the owner of the private streets in Berry Creek (the "Private Streets") and is responsible for the maintenance thereof; and

WHEREAS, the Owners and the Association acknowledge that Berry Creek is a subdivision within the City limits of the City and in accordance with the Texas Transportation Code Section 542.008 (the "Statute"), the Owners and the Association presented a petition to the City Council of the City (the "City Council") seeking to cause the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to the Private Streets in Berry Creek (the "Petition"); and

WHEREAS, the City Council has found the Petition in the best interest of the City generally, has accepted the Petition, and directed the City staff to draft an ordinance and this Agreement, according to the requirements of the Statute to provide for the enforcement of the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to Private Streets in Berry Creek.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Association, and the Owners agree as follows:

1. Request Pursuant to the Statute. Pursuant to the Statute, the City agrees to extend the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to the Private Streets in Berry Creek. The Owners and the Association agree that, pursuant to this Agreement, the Private Streets are considered to be public streets for purposes of the application and enforcement of the traffic rules and laws addressed herein.

2. Traffic Signs. The Association shall install subdivision traffic signs and street name blade signs in compliance with both the Texas Manual of Uniform Traffic Control Device standards and the City's standards. The Association shall be solely responsible for all costs and expenses of the signs and the installation thereof.

3. **Speed Humps.** The Owners and the Association agree that all speed humps on the Private Streets must comply with the City's standards. New speed humps must receive approval through the normal City process and are the discretion of the City of Schertz based on City policies and standards. The Association shall be solely responsible for all costs and expenses necessary to bring and keep the speed humps in compliance.

4. **Plans, Installation, and Approval.** Prior to installation of the subdivision traffic signs and street name blade signs and prior to work being done on the speed humps, the Association shall submit plans for the design and specifications of such traffic and street name or other signage and such speed humps and obtain written approval from the City. The Association shall construct, repair, and/or install, or cause the construction, repair, and/or installation of, such signage and speed humps in accordance with the approved plans.

5. **Association Obligations.** The Association will pay for all repairs, replacement, and maintenance of all signage and speed humps to maintain compliance with the applicable standards set forth herein. All maintenance performed by the Association will meet the specifications of the codified requirements of the City related to traffic signage and speed humps in residential subdivisions. If the City determines that repairs, replacement, and/or maintenance are required, the City shall inform the Association in writing of the need for said repairs, replacement, and/or maintenance, and the Association shall commence said repairs, replacement, and/or maintenance within fourteen (14) calendar days of such notice and diligently pursue the work thereon, with completion thereof not to exceed forty-five (45) calendar days.

6. **The City's Obligations.** The City hereby agrees that it will extend and enforce (to the same extent it would enforce such rules and laws in other areas of the City) any traffic rules and laws related to the operation of motor vehicles on public thoroughfares in the City to the Private Streets.

7. **Traffic Control Devices.** Pursuant to the authority granted under the Statute, the City may place official traffic control devices on property abutting the Private Streets if (1) those devices relate to a specified traffic rule; and (2) the consent of the owner of that property is obtained or an easement is available for the placement. The Owners and the Association hereby consent to the placement of any such devices on the property owned by them. No additional consent shall be required.

8. **Payment.** The Owners and the Association will not be required to pay any additional cost for the services requested herein, unless such services are requested in excess of the services provided to City citizens that do not reside in private gated communities in the City. Notwithstanding the foregoing, the Association shall be required to pay those costs and expenses discussed in Sections 2., 3., and 5. of this Agreement.

9. INDEMNIFICATION. THE ASSOCIATION AND EACH OF THE OWNERS, INDIVIDUALLY AND ON BEHALF OF EACH OF THEIR SUCCESSORS, ASSIGNEES, GRANTEEES, AND/OR TRUSTEES DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS CITY COUNCILMEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL

DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE ASSOCIATION AND/OR EACH OF THE OWNERS IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THE ASSOCIATION AND THE OWNERS ARE EXPRESSLY REQUIRED TO DEFEND THE INDEMNIFIED PARTIES AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, THE CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE ASSOCIATION AND/OR THE OWNERS IN FULFILLING THEIR OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY THE CITY IN WRITING. THE CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER THE CITY IS UNDER NO OBLIGATION TO DO SO.

THIS SECTION 9. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT WITH RESPECT TO ANY INCIDENT OCCURRING DURING THE TERM HEREOF.

11. Miscellaneous.

- (a) Breach. In the event of a breach of this Agreement by any party, any other party may pursue any remedies available at law or in equity, including without limitation, specific performance.
- (b) Assignment, Binding Nature, and Recording. This Agreement may not be assigned by the Association or the Owners.
- (c) Notices. Any notice required or permitted by this Agreement is effective when personally delivered in writing or two (2) business days after notice is deposited with the U.S. Postal Service, postage prepaid, certified mail with return receipt requested, and addressed as follows:

City:

City of Schertz, Texas
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

- (h) Choice of Law. This Agreement will be construed under the laws of the State of Texas without regard to choose-of-law rules of any jurisdiction. Venue shall be in the State District Courts of Guadalupe County, Texas with respect to any lawsuit arising out of or construing the terms and provisions of this Agreement. No provision of this Agreement shall constitute a consent to suit by any party.
- (i) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.
- (j) Immunity. By execution of this Agreement, the parties agree that the City has not waived or surrendered any of its governmental powers, immunities, or rights.
- (k) Force Majeure. Notwithstanding anything to the contrary contained herein, in the event a party is prevented from performing its obligations hereunder due to inclement weather, strikes, riots, civil unrest, or any other cause which is beyond the reasonable control of such party (a delay due to any such cause being referred to herein as a "Force Majeure Delay") then the time period for such party's performance shall be extended by the length of the Force Majeure Delay and such party's failure to perform such obligation shall be excused for the duration of, and to the extent of, such Force Majeure Delay.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereby have executed this Agreement to be effective as of the Effective Date.

THE CITY:

CITY OF SCHERTZ, TEXAS,
a Texas municipal corporation

By: _____
Dr. Mark Browne, City Manager

Date: _____

THE ASSOCIATION:

_____,
a _____

By: _____

Name: _____

Title: _____

Date: _____

