

*Executed
Agreement*

**AGREEMENT BETWEEN THE
CITY OF KYLE, PLUM CREEK DEVELOPMENT PARTNERS, LTD.,
AND WILLIAM NEGLEY, TRUSTEE,
FOR DEVELOPMENT AND ANNEXATION OF PHASE I OF THE PLUM CREEK
RANCH PROPERTY**

This Agreement between the City of Kyle, Plum Creek Development Partners, Ltd. and William Negley, Trustee, for Development and Annexation of Phase I of the Plum Creek Ranch Property (this "Agreement") is entered into by and among the City of Kyle, Texas, a municipal corporation (the "City"), and the Plum Creek Development Partners, Ltd., a Texas limited partnership ("Plum Creek"), and William Negley, Trustee (the "Landowner") (the City, Plum Creek, and the Landowner are collectively referred to herein as the "Parties".)

RECITALS

WHEREAS, the City is a Type A general-law city with certain powers and duties set forth in the general laws of the State of Texas, including but not limited to the powers and duties set forth in: Chapter 43 of the Texas Local Government Code to annex property; Chapter 51 of the Texas Local Government Code to enact legislation; Chapter 211 of the Texas Local Government Code to regulate land use, structures, business, and related activities; Chapter 212 of the Texas Local Government Code to regulate the subdivision of land located within the City and its extraterritorial jurisdiction; Chapter 13 of the Texas Water Code to provide water and wastewater treatment service to areas within its certificated service area; Chapter 395 of the Texas Local Government Code to finance capital improvements required by new development; Chapter 481, Subchapter I, of the Texas Government Code to apply uniform requirements to projects requiring series of permits; and, Section 380.001 of the Texas Local Government Code to promote economic development;

WHEREAS, Plum Creek proposes to develop and subdivide a 2212.156 acre tract of land owned by Landowner that is partially located in the extraterritorial jurisdiction of the City (the "Property"), which is depicted on the map attached to this Agreement as Exhibit "A", and Plum Creek plans to develop the Property in phases as a master-planned community with residential, commercial, and industrial areas, along with parks, schools, and a golf course, with the first phase of development being the tract located within the City's ETJ south of County Road 171 ("Phase I") consisting of 1247.5 acres, more or less, as depicted on the map attached as Exhibit "A" and as described in the Plum Creek Phase I PUD Master Plan prepared by Plum Creek (the "Plum Creek Phase I PUD Master Plan"), which is attached to this Agreement as Exhibit "B";

WHEREAS, notwithstanding any term or provision of this Agreement, Phase II of the Property as hereinafter defined ("Phase II") will be planned and developed pursuant to a written amendment or addendum to this Agreement, or pursuant to a separate agreement entered into between the Parties;

WHEREAS, Plum Creek will develop and subdivide Phase I pursuant to the terms and conditions of this Agreement as a planned unit development that will integrate functional and beneficial use of open space and recreation areas with residential development; preserve the City's environmental attractiveness and natural features; provide for an efficient use of land that

requires smaller networks of utilities and streets, and thereby lower energy, development, maintenance, and housing costs; diversify permitted uses and vary the relationship of uses, structures, and open space and the height of structures in developments intended as cohesive, unified projects; create a safe and desirable living environment for residential areas characterized by a unified building and site development program; provide for efficient and effective traffic circulation, both within and adjacent to the Property; create a variety of housing to provide a greater choice of types of environment and living units; provide attractive and appropriate locations for business and manufacturing uses; provide opportunities for employment close to residences; provide for distinct, identifiable new neighborhoods that exhibit the design features common to traditional neighborhoods and small towns and that are accessible by pedestrians from the surrounding residential areas; and, foster innovative land development practices that will enhance and improve the public health, safety, and general welfare;

WHEREAS, the City is responsible for the regulation and approval of subdivisions within its extraterritorial jurisdiction ("ETJ") and Plum Creek and the Landowner desire that the City provide water and wastewater service to Phase I to enable development of Phase I;

WHEREAS, the City, as holder of the certificates of convenience and necessity for water and wastewater services to areas that include the Property, is required to serve customers within its service area and to provide continuous and adequate services within the area, and the City desires to provide such services to Phase I to fulfill its obligations and to enable development of Phase I;

WHEREAS, in order to provide water and wastewater service to Phase I and to enable the City to plan for the provision of future water and wastewater service to Phase II, it is necessary for the City to construct certain improvements to the City's water and wastewater system, as described more fully in Article IV of this Agreement (the "Water and Wastewater Facilities"), and the City is willing either to construct such facilities using funds available to the City from impact fees paid by Plum Creek, in accordance with Article IV of this Agreement, and otherwise, or to authorize Plum Creek to construct such facilities as set forth in this Agreement and, in such event, to receive as payment for such construction costs LUE certificates for impact fees due or to become due from Plum Creek in connection with development of Phase I;

WHEREAS, the Parties further desire to provide for the development, subdivision, annexation and zoning necessary for the orderly and successful development of Phase I as a master-planned community and that the City annex Phase I to be developed by Plum Creek pursuant to petitions submitted by the Landowner; and

WHEREAS, the City Council hereby finds that the annexation and development of Phase I pursuant to this Agreement, including the proposed zoning and subdivisions, is in the best interest of the Parties hereto and will promote local economic development and stimulate business and commercial activity in the City by creating new jobs and significantly increasing the tax base in the City; and

WHEREAS, the City Council hereby determines that the annexation and development of Phase I in accordance with this Agreement, the Plum Creek Phase I PUD Master Plan and the

planned unit development zoning and subdivision requirements of the City are for the good government and order, trade, and commerce of the City and are useful for carrying out the powers and duties granted by law to the City and its departments; and

WHEREAS, the Parties agree that land use and development of Phase I will be in accordance with this Agreement and the zoning and subdivision requirements of the City, which the Parties determine is in their mutual best interest; and

WHEREAS, the Parties agree that permits and approvals by the City shall be issued and granted and land use and development of Phase I will be in accordance with this Agreement, the Plum Creek Phase I PUD Master Plan, and the planned unit development zoning and subdivision requirements of the City, which the Parties determine is in their mutual best interest; and

WHEREAS, the Parties agree that permits and approvals by the City for the development of each separate subdivision of Phase I shall comply with the requirements of Section 481.143 of the Texas Government Code, and the applicable time shall begin on the effective date of this Agreement (the "Effective Date"); and

WHEREAS, the Parties anticipate that Phase I will be annexed within the corporate limits of the City in accordance with the terms of this Agreement; and

WHEREAS, the Parties agree that the development of Phase I will best be accomplished through a development agreement; and

WHEREAS, the Parties agree that the development requirements of the City, the economic development trade and commerce, good government and order of the City and this Agreement advance legitimate interests of the City; NOW, THEREFORE,

AGREEMENT

For and in consideration of the mutual promises, obligations, and benefits herein set forth, the City, Plum Creek and the Landowner contract and agree as follows:

ARTICLE I Definitions

1.01 Agreement. The term "Agreement" means this Agreement and all exhibits to this Agreement.

1.02 CCN. The term "CCN" means the Certificate of Convenience and Necessity granted by the Texas Water Commission (now the Texas Natural Resource Conservation Commission) to the City that authorizes the City to provide water or sewer service, as the case may be, to the area designated by the Commission. The City's CCN for water service is

attached as Exhibit "G" to this Agreement. The City's CCN for wastewater service is attached as Exhibit "H" to this Agreement.

1.03 Capital Improvements Plan. The term "Capital Improvements Plan" means the impact fee study for water and sewer system capital improvements and facility expansions adopted by the City in 1997 that includes the capital improvements and facility expansions identified in Schedule of Water and Wastewater Facilities, which is attached to this Agreement as Exhibit "F," necessary to provide water and wastewater service to Phase I and that is subject to being amended and updated by the City Council pursuant to Chapter 395, Texas Local Government Code.

1.04 City. The term "City" means the City of Kyle or the City Council, as the case may be.

1.05 City Council. The term "City Council" means the City Council of the City of Kyle.

1.06 Commission. The term "Commission" means the Texas Natural Resource Conservation Commission, or its successor.

1.07 Development Schedule. The term "Development Schedule" means Plum Creek's anticipated schedule for development of Phase I that is attached as Exhibit "C" to this Agreement, which may be amended from time to time as provided in Section 4.02 of this Agreement.

1.08 Director. The term "Director" means the Director of the Public Works Department of the City, or any successor department responsible for the duties currently performed by this department.

1.09 Edwards Aquifer Authority or Authority. The term "Edwards Aquifer Authority" or "Authority" means the regional conservation and reclamation district created by the Texas Legislature, Chapter 626, Acts of the 73rd Legislature, Regular Session, as amended.

1.10 Effective Date. The term "Effective Date" means the date on which this Agreement is approved by the City Council and executed by its designated representative.

1.11 Effluent. The term "Effluent" means the treated wastewater effluent from the City's wastewater treatment plant.

1.12 Effluent Pumping Facilities. The term "Effluent Pumping Facilities" means the facilities necessary to convey Stored Water from the Storage Pond to the Irrigation System.

1.13 Effluent Transportation and Distribution Facilities. The term "Effluent Transportation and Distribution Facilities" means the facilities necessary to convey Effluent from the City's wastewater treatment plant to the Storage Pond.

1.14 Extraterritorial Jurisdiction or ETJ. The term "Extraterritorial Jurisdiction" or "ETJ" has the meaning set forth in Chapter 42, Texas Local Government Code.

1.15 Force Majeure. The term "force majeure" means acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any civil or military authority; insurrections; riots; epidemic; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability. The term "force majeure" shall not include a shortage of water that may result from the City's failure to plan and secure an adequate source of water supply for Phase I, but shall include shortages resulting from drought and other causes shared in common with similarly situated public entities.

1.16 GPD. The term "GPD" means gallons per day.

1.17 Impact Fee. The term "Impact Fee" means the assessment imposed by the City against Phase I in order to generate revenue for funding or recouping the costs of the Water and Wastewater Facilities as authorized by Chapter 395 of the Texas Local Government Code.

1.18 Irrigation Well. The term "Irrigation Well" means the water well financed, constructed, and operated by Plum Creek pursuant to Section 3.05 of this Agreement.

1.19 Land Use Assumptions. The term "Land Use Assumptions" means the land uses, densities, intensities, and projected population for Phase I, which are provided in the Plum Creek Phase I PUD Master Plan and are included by the City in the Capital Improvements Plan.

1.20 Landowner. The term "Landowner" means William Negley, Trustee.

1.21 Living Unit Equivalent or LUE. The term "Living Unit Equivalent" or "LUE" means a unit equal to the quantity of water and wastewater service required by a typical unit of development.

1.22 LUE Certificate. The term "LUE Certificate" means the certificate that the City shall give to Plum Creek upon the payment or prepayment of an Impact Fee by Plum Creek or upon the payment by Plum Creek of costs and expenses of oversizing the Water and Wastewater Facilities to provide future service to Phase II. An LUE Certificate shall be in the form attached as Exhibit I to this Agreement. An LUE Certificate given to Plum Creek upon payment or prepayment of an Impact Fee may be used and applied by Plum Creek against the Impact Fee requirement for any part of Phase I subdivided thereafter; provided that an LUE Certificate given to Plum Creek upon payment of costs and expense of oversizing the Water and Wastewater Facilities to provide future service to Phase II may be used and applied by Plum Creek against the Impact Fee requirement for any part of Phase II subdivided thereafter.

1.23 MGD. The term "MGD" means million gallons per day.

1.24 Mountain City. The term "Mountain City" means the City of Mountain City, which is located adjacent to and northwest of the ETJ of the City of Kyle.

1.25 Parties. The term "Parties" means the City, Plum Creek, and the Landowner.

1.26 Phase I. The term "Phase I" means that part of the Property located south of County Road 171, which consists of 1247.5 acres as set forth on Exhibit "A" to this Agreement, that will be designated in the annexation petitions as Phase I-A, Phase I-B, and Phase I-C and annexed by the City in three separate annexations and that will be annexed, zoned, and subdivided by the City and developed by Plum Creek and the Landowner pursuant to the terms and conditions of this Agreement.

1.27 Phase I-A. The term "Phase I-A" means that part of the Property located in Phase I, which consists of 673.75 acres, as set forth on Exhibit "J" to this Agreement, that will be designated in the first annexation petition to be submitted by the Landowner to the City in accordance with this Agreement.

1.28 Phase I-B. The term "Phase I-B" means that part of the Property located in Phase I, which consists of 456.19 acres, as set forth on Exhibit "J-1" to this Agreement, that will be designated in the second annexation petition to be submitted by the Landowner to the City in accordance with this Agreement.

1.29 Phase I-C. The term "Phase I-C" means that part of the Property located in Phase I, which consists of 117.30 acres, as set forth in Exhibit "J-2" to this Agreement, that will be designated in the third annexation petition to be submitted by the Landowner to the City in accordance with this Agreement.

1.30 Phase II. The term "Phase II" means that part of the Property located north of County Road 171, which consists of 964.656 acres as set forth on Exhibit "A" to this Agreement, that may be subdivided and developed by Plum Creek and the Landowner pursuant to the terms and conditions of a written amendment or addendum to this Agreement or pursuant to a separate written agreement.

1.31 Planning Commission. The term "Planning Commission" means the Planning and Zoning Commission of the City.

1.32 Planned Unit Development or PUD. The term "Planned Unit Development" or "PUD" shall have the meaning set forth in the Plum Creek Planned Unit Development Zoning Ordinance.

1.33 Plum Creek. The term "Plum Creek" means Plum Creek Development Partners, Ltd., a Texas limited partnership, or its successors or assigns.

1.34 Plum Creek Phase II Master Plan. The term "Plum Creek Phase II Master Plan" means the plan for development of all or part of Phase II.

1.35 Plum Creek Planned Unit Development. The term "Plum Creek Planned Unit Development" or "Plum Creek PUD" means the district approved by the City to allow for mixed uses such as compatible residential, commercial and/or industrial, within the boundaries of Phase I.

1.36 Plum Creek Planned Unit Development Subdivision Ordinance. The term "Plum Creek Planned Unit Development Subdivision Ordinance" or "Plum Creek PUD Subdivision Ordinance" means the City subdivision ordinance and site plan requirements applicable to the Plum Creek Planned Unit Development in effect on the date that the City Council approves this Agreement, which is attached as Exhibit "D" to this Agreement.

1.37 Plum Creek Planned Unit Development Zoning Ordinance. The term "Plum Creek Planned Unit Development Zoning Ordinance" or "Plum Creek PUD Zoning Ordinance" means the City zoning ordinance that sets forth the zoning standards applicable to all applications for development of Phase I within the Plum Creek Planned Unit Development which is to be adopted by the City pursuant to Section 2.07 of this Agreement and is attached as Exhibit "E" to this Agreement.

1.38 Plum Creek's Engineer. The term "Plum Creek's Engineer" means Charles Howard, P.E., or another engineer designated by Plum Creek.

1.39 Plum Creek Phase I PUD Master Plan. The term "Plum Creek Phase I PUD Master Plan" means the plan for development of Phase I-A, Phase I-B, and Phase I-C, which is attached to this Agreement as Exhibit "B".

1.40 Property. The term "Property" means the 2212.156 acre tract of land depicted on the map attached to this Agreement as Exhibit "A", which is divided into Phases I and II as set forth on Exhibit "A".

1.41 Schedule of Water and Wastewater Facilities. The term "Schedule of Water and Wastewater Facilities" means the document identifying and describing the Water and Wastewater Facilities, which is attached hereto as Exhibit "F".

1.42 Service Plan. The term "Service Plan" means the plan that provides for the extension of municipal services to Phase I-A, Phase I-B, and Phase I-C to be annexed by the City, which shall be consistent with the terms of this Agreement.

1.43 Storage Pond. The term "Storage Pond" means the pond created by the construction of dams and other related improvements as depicted on the Plum Creek Phase I PUD Master Plan.

1.44 Stored Water. The term "Stored Water" means the water impounded in the Storage Pond including but not limited to any run-off to the Storage Pond and any treated wastewater effluent from the City's wastewater treatment plant.

1.45 Treated Wastewater Effluent Rate. The term "Treated Wastewater Effluent Rate" means the rate to be charged to Plum Creek by the City per 1,000 gallons of treated wastewater effluent, as determined pursuant to Section 3.06(d) of this Agreement.

1.46 Water and Wastewater Facilities. The term "Water and Wastewater Facilities" means the capital improvements and facility expansions necessary to provide water and wastewater services to Phase I. The "Water and Wastewater Facilities" are described in the Schedule of Water and Wastewater Facilities.

1.47 Water and Wastewater Facilities Costs. The term "Water and Wastewater Facilities Costs" means the costs associated with the acquisition and/or construction of the Water and Wastewater Facilities, including design and construction costs, surveying costs, cost of soils and materials testing, and engineering fees relating to the Water and Wastewater Facilities; financing and issuance costs and expenses; attorneys fees; fees charged by or reimbursable to the City for review of the plans and specifications for, and for inspection and construction of, the Water and Wastewater Facilities; and, other necessary and reasonable out-of-pocket costs expended by the City, or to the extent applicable Plum Creek, in connection with the construction and acquisition of the Water and Wastewater Facilities.

ARTICLE II

The Property and Plum Creek Phase I PUD Master Plan for Development

2.01 The Property. The Property consists of a 2212.156 acre tract of land, located north of, and contiguous to, the City of Kyle and west of Interstate Highway 35, which is divided into two tracts by County Road 171. The Property located south of County Road 171 is located within the City's ETJ. A portion of the Property north of County Road 171 is located within the extraterritorial jurisdiction of the City of Mountain City ("Mountain City"). A map depicting the Property is attached as Exhibit "A" to this Agreement.

2.02 The Plum Creek Phase I PUD Master Plan for Development. Plum Creek will develop Phase I in accordance with Section 4.02 of this Agreement and the Plum Creek Phase I PUD Master Plan prepared by Plum Creek. As set forth on the Plum Creek Phase I PUD Master Plan, the proposed development is a master-planned community with residential, commercial, and industrial areas, parks, schools, and a golf course. Phase I of the Property is located south of County Road 171. Plum Creek's anticipated schedule for development of Phase I is set forth in the Development Schedule, which is attached as Exhibit "C" to this Agreement. It is anticipated that Phase I will be developed over a 15-year period. As indicated in Exhibit "A", Phase II is designated as "development reserve". Phase II may be developed by Plum Creek upon an amendment to and revision of the Plum Creek Phase I PUD Master Plan pursuant to Sections 2.04 and 2.08 of this Agreement, or by separate written agreement between the Parties.

2.03 City Approval of Plum Creek Phase I PUD Master Plan. The City hereby approves the Plum Creek Phase I PUD Master Plan. The Plum Creek Phase I PUD Master Plan includes the land use plan for development of Phase I. The City's approval of the Plum Creek Phase I PUD Master Plan reflects the City's approval of the different types and levels of

development of Phase I. Plum Creek will develop Phase I in accordance with the Plum Creek Phase I PUD Master Plan and the Parties agree that such development shall include the type, intensity and mix of land uses, the estimated number of LUEs, the general location of major streets and the general location of water, wastewater, and drainage facilities set forth in the Plum Creek Phase I PUD Master Plan, the Development Schedule, and the Schedule of Water and Wastewater Facilities. The City acknowledges that Phase II, designated as development reserve in Exhibit "A", currently includes a portion of the Property located within the ETJ of Mountain City and the City will request Mountain City to release such portion of the Property from its ETJ and to authorize such portion of the Property to be included in the City's ETJ.

2.04 Amendment of the Plum Creek Phase I PUD Master Plan. Plum Creek may from time to time amend the Plum Creek Phase I PUD Master Plan with the City's approval as development proceeds; provided that an amendment that changes a land use in Phase I or an amendment that allows for inclusion and development of all or a portion of Phase II shall be subject to the applicable amendment process set forth in the Plum Creek PUD Zoning Ordinance.

2.05 Plum Creek PUD Subdivision Ordinance and Plum Creek PUD Zoning Ordinance. Plum Creek shall develop Phase I pursuant to the requirements of the Plum Creek PUD Subdivision Ordinance, and the Plum Creek PUD Zoning Ordinance, subject to the terms of this Agreement. The Plum Creek Planned Unit Development Subdivision Ordinance that will be applicable to the development of Phase I is attached hereto as Exhibit "D". The Plum Creek Planned Unit Development Zoning Ordinance that will be applicable to all applications for zoning of Phase I is attached as Exhibit "E" to this Agreement. In the event that either the Plum Creek PUD Subdivision Ordinance or the Plum Creek PUD Zoning Ordinance is in conflict with the terms of this Agreement, the Parties shall consider the provisions of the respective ordinance and the terms of this Agreement and resolve such conflict in a mutually agreeable manner.

2.06 Additional City Approvals. The Parties agree that City Council approval of the Plum Creek Phase I PUD Master Plan, as set forth in Section 2.03 of this Agreement, after the payment by Plum Creek of the applicable filing fees and the approval of such plan by the Planning and Zoning Commission, constitutes the first permit required in the series of permits and approvals required to develop and zone Phase I in accordance with this Agreement, and that no platting and zoning requirements other than the Plum Creek PUD Subdivision Ordinance, the Plum Creek PUD Zoning Ordinance and this Agreement shall be applicable to the subdivision and zoning of Phase I, except as specifically set forth in this Agreement. The foregoing restriction is limited to the platting and zoning requirements subject to the terms of Section 481.143 of the Texas Government Code. The Parties hereby agree that all subsequent applications for subdivision and zoning approvals by Plum Creek relating to Phase I, including but not limited to applications for preliminary plat and final plat approval, and zoning and site plan approvals, shall be finally approved in compliance with the Plum Creek PUD Subdivision Ordinance, the Plum Creek PUD Zoning Ordinance, and this Agreement; provided such applications for subdivision or zoning approval substantially conform to the Plum Creek Phase I PUD Master Plan, as may be revised as set forth in Section 2.04 hereof, and the applicable ordinances that are not inconsistent or in conflict with the Plum Creek PUD Subdivision Ordinance and the Plum Creek PUD Zoning Ordinance.

2.07 Approval of Plum Creek PUD Subdivision Ordinance and Plum Creek PUD Zoning Ordinance.

a. The City, Landowner and Plum Creek agree that prior to or contemporaneously with the approval of this Agreement and pursuant to the requirements of Chapt. 212, Tex. Loc. Gov't. Code, the City shall approve the Plum Creek PUD Subdivision Ordinance which establishes the platting and subdivision requirements applicable to Phase I.

b. The City, Landowner and Plum Creek agree that upon the completion of annexation by the City of Phase I-A, Phase I-B and Phase I-C, in accordance with this Agreement and pursuant to the requirements of Chapt. 211, Tex. Loc. Gov't. Code, and contemporaneously with the annexation of Phase I-C, the City shall approve the Plum Creek PUD Zoning Ordinance which establishes the zoning requirements applicable to Phase I.

2.08 Amendments to Plum Creek PUD Subdivision Ordinance and Plum Creek PUD Zoning Ordinance. In the event the City amends the Plum Creek PUD Subdivision Ordinance and/or the Plum Creek PUD Zoning Ordinance, Plum Creek and the Landowner agree, after such revisions are approved by the City, to review said amendments and the impact such amendments would have on the Plum Creek Phase I PUD Master Plan. If Plum Creek and the Landowner determine that the amendments are acceptable or would not have a substantial or material impact upon the development of Phase I, Plum Creek and the Landowner shall deliver to the City a written amendment to this Agreement stating that Plum Creek and the Landowner agree to have all necessary zoning and development of Phase I subject to such amendments without otherwise forfeiting any rights Plum Creek and the Landowner have under this Agreement or applicable laws.

2.09 Inclusion of Phase II. Plum Creek may file an application for inclusion of all or part of Phase II in the Plum Creek Planned Unit Development and shall file with any such application a plan for development of such part of Phase II (the "Plum Creek Phase II Master Plan"). In the event of any such application, Plum Creek shall use its best efforts to integrate the proposed development of Phase II with that set forth in the Plum Creek Phase I PUD Master Plan. The application for inclusion of Phase II shall be considered by the City in accordance with the Plum Creek PUD Subdivision Ordinance, Plum Creek PUD Zoning Ordinance, and fee requirements of the City in effect on the date of such application, provided that such application shall not require the re-approval of the Plum Creek Phase I PUD Master Plan, or otherwise alter or affect the terms of the Plum Creek Phase I PUD Master Plan as approved by Section 2.03 of this Agreement. Should the application for inclusion of Phase II include revisions to the Plum Creek Phase I PUD Master Plan, then Plum Creek may seek approval of an amendment to that portion of the Plum Creek Phase I PUD Master Plan affected by such revisions, which may be considered by the City at the time of the application for the inclusion of Phase II. Upon approval of the Plum Creek Phase II Master Plan, Plum Creek shall have the rights set forth in this Agreement, as amended, or in such addendum to this Agreement, and the Plum Creek PUD Subdivision Ordinance, Plum Creek PUD Zoning Ordinance, and other applicable ordinances and regulations in effect on the date the application for inclusion of Phase II is approved by the City.

ARTICLE III
Utility Service and Rates

3.01 City Agreement to Provide Service to Property. The City has Certificates of Convenience and Necessity to provide water and wastewater services to Phase I which, along with the maps depicting the City's service area, are attached as Exhibits "G" and "H", respectively, to this Agreement. The entirety of the Property is located within the City's CCN service area for wastewater service, and most of the Property is located within the City's CCN service area for water service. Subject to the City's exercise of its police powers and governmental discretion, the City acknowledges its obligation to serve customers within its service areas and to render adequate service within the service areas. The City will commence water and wastewater treatment services to each phase of development of Phase I and, subject to this Agreement, as amended, and to any addendum to this Agreement as provided in Section 2.08, Phase II upon completion of the capital improvements and facility expansions necessary to provide service to such Phase I or Phase II.

3.02 Water and Wastewater Capacity Needs of Property. Plum Creek and the Landowner project that Phase I as developed in accordance with the Plum Creek Phase I PUD Master Plan will include the following land uses and corresponding water and wastewater service needs:

Plum Creek Phase I PUD Master Plan

ZONING CATEGORY	LAND USE [CIP NOMENCLATURE]	GROSS AREA/ ACREAGE	DWELLING UNITS	WATER & SEWAGE UNITS (LUE'S)
OS	Open Space (Including Golf Courses)	236.7		
R-1	Single Family - Detached	302.1	1208.6	1209
R-2	Single Family - Attached	284.8	2278.7	2279
R-3	Multi-Family	19.5	702.2	541
NC	Single Family - Attached Multi-Family - 30% Commercial - 20% Schools - 50%	59.5	142.8	143 46 97
MXD	Multi-Family - 30% Commercial - 70%	37.9	409.3	315 103
EMP	Commercial - 70% Industrial - 30%	106.8		289 124
LI	Industrial	138.6		537
Subtotal		1185.9		
Road Right-of-Way	N/A	61.6		
TOTAL		1247.5	4741.6	5683

3.87

Based upon this proposed development, Phase I will require 2.2 MGD of potable water capacity and 2.0 MGD of wastewater treatment capacity. The City hereby agrees to make such capacity available to Phase I in accordance with the projected times for completion of development of Phase I as set forth in the Development Schedule; provided and to the extent that Plum Creek actually develops Phase I in accordance with such projections and schedule, as may be revised pursuant to Section 4.02 of this Agreement. The Parties acknowledge that the capacity needs set forth for the several categories in this Section are planned and estimated needs based upon the Plum Creek Phase I PUD Master Plan but that actual needs may vary to a reasonable extent depending upon the actual number of connections and the type of commercial and industrial customers. The City agrees to favorably consider requests to provide reasonable volumes of additional service to Phase I on reasonable terms and conditions if needed, provided that sufficient treatment plant capacities are available, a sufficient supply of raw water is available, the capacity of the City's raw water transmission line is adequate, and capacity is available in the Water and Wastewater Facilities. If additional capacity is needed but is not available, the Parties may enter into an agreement regarding the financing and construction of such improvements and facility expansions as necessary to provide the needed capacity. It is

anticipated that Phase II, when developed, will require approximately 1.4 MGD of potable water capacity and 1.1 MGD of wastewater treatment capacity, and the City agrees to include such volumes in the City's planning of future service and demands, and make such capacity available on reasonable terms and conditions provided that sufficient treatment plant capacities are available, a sufficient supply of raw water is then available, the capacity of the City's raw water transmission line is adequate, and capacity is available in the Water and Wastewater Facilities, following City approval of the Plum Creek Phase II Master Plan and amendment of the Plum Creek Phase I PUD Master Plan pursuant to Section 2.08 of this Agreement, if necessary, to include the development of Phase II and in accordance with a development schedule for Phase II approved by the City.

3.03 Water and Wastewater Service Rates and Fees. Except as otherwise provided by this Agreement, the rates and fees for potable water service and wastewater treatment service to the Property shall be the same as those rates applicable to other similarly classified customers located within the corporate limits of the City or, as applicable, its ETJ.

3.04 Expansion of City's CCN Service Area for Water. The City's CCN for water service includes all of the Property, except that portion of the Property located within Mountain City's extraterritorial jurisdiction. The City shall work cooperatively with Mountain City and, within ninety (90) days of the date Plum Creek makes application for approval of the Plum Creek Phase II Master Plan, or any other comprehensive plan for the development of Phase II, the City shall submit to the Texas Natural Resource Conservation Commission (the "Commission") an application to amend the City's water service area to include that portion of the Property that currently is not within the City's water service area. The City shall use its best efforts to obtain approval of the application to expand the City's CCN for water service. Plum Creek shall bear 50 percent of the cost of and assist the City in the preparing and filing of such application and obtaining Commission approval.

3.05 Irrigation Well. Plum Creek may finance, construct, and operate a water well for irrigation of public and common areas and the golf course located within the boundaries of the Property. Design and construction of the Irrigation Well shall be in accordance with Sections 4.03 and 4.05 of this Agreement. It is the intent of the Parties that, if Plum Creek exercises its right to construct the Effluent Facilities, Plum Creek may operate the Irrigation Well until such time as the amount of effluent from the Effluent Facilities is sufficient to irrigate the public and common areas and the golf course located within the boundaries of the Property. With the approval of the City Council granted in a public meeting after discussion of the consideration to be given Plum Creek by the City, Plum Creek may convey the Irrigation Well to the City and the City will thereafter own such well and may operate and maintain such well as part of its water system. Should the City Council accept ownership of the Irrigation Well, the agreed depreciated reasonable construction costs of the Irrigation Well incurred by Plum Creek shall be deemed to be a prepayment of Impact Fees in that amount and the City shall issue to Plum Creek LUE Certificates for such prepaid Impact Fees upon acceptance of ownership of the Irrigation Well.

3.06 Treated Wastewater Effluent Facilities.

a. The Effluent Transportation and Distribution Facilities and Effluent Pumping Facilities will promote water conservation and will be of mutual benefit to the Parties. If constructed, such Facilities may be paid for by Plum Creek or, if approved by the then City Council, may be added to the Capital Improvements Plan by the City and financed from Impact Fees assessed by the City and paid by Plum Creek, pursuant to Articles IV and V of this Agreement. The Effluent Transportation and Distribution Facilities and Effluent Pumping Facilities shall be constructed in accordance with Article IV of this Agreement.

b. Upon completion of the Effluent Transportation and Distribution Facilities, Storage Pond, and Effluent Pumping Facilities, the City shall operate and maintain the Effluent Transportation and Distribution Facilities, and the City shall provide all available treated Effluent from the City's wastewater treatment plant to the Storage Pond, subject to the City obtaining approval from the Texas Natural Resource Conservation Commission for use of the Effluent for irrigation. Upon termination of this Agreement, including any periods of extension pursuant to this Agreement, Plum Creek may submit a written request to the City to enter into a separate written agreement pursuant to which the City will continue to provide available effluent, and the City may enter into such agreement.

c. Within ninety (90) days of the date of submittal by Plum Creek of an application for approval by the City of the permit for construction of the Effluent Transportation and Distribution Facilities and Effluent Pumping Facilities, the City will, with Plum Creek's bearing 50 percent of the cost, submit an application to the Commission for approval for the use of Effluent for irrigation. Plum Creek shall assist the City in the filing of the application and obtaining Commission approval.

d. The City shall charge Plum Creek and Plum Creek shall pay to the City monthly a rate per 1,000 gallons of treated wastewater effluent equal to the City's operating and maintenance cost of the Effluent Transportation and Distribution Facilities (the "Treated Wastewater Effluent Rate"). The Treated Wastewater Effluent Rate provided for herein shall, for a period of 10 years from the date of this Agreement, be equal to the City's operating and maintenance cost of the Effluent Transportation and Distribution Facilities, after which 10 years the City may adjust the charge per 1,000 gallons annually based on actual increases in the City's operating and maintenance costs and market value, provided that the total charge does not exceed 125% of the City's actual operating and maintenance costs of the Effluent Transportation and Distribution Facilities for the prior year.

e. In the event that Plum Creek shall fail to give the City written notice on or before the third anniversary date of this Agreement that Plum Creek elects to construct the Effluent Transportation and Distribution Facilities, and Plum Creek shall contractually obligate itself to design, finance and construct such facilities within one year from the date of such written notice, Plum Creek's rights and the City's obligations pursuant to Subsections 3.06(a),(b) and (c) above shall terminate and expire. In the event Plum Creek elects not to construct within the three year period, Plum Creek may submit a written request to the City to enter into a separate written agreement pursuant to which the City will provide effluent and, in such event, the City may elect to enter into such agreement.

f. In the event that the Effluent Transportation and Distribution Facilities, the Storage Pond, the Effluent Pumping Facilities or the Effluent is not available for irrigation and water is not available from the Irrigation Well, the City will supply Plum Creek with potable water for irrigation of public and common areas and the golf course, on the same terms and conditions that water is supplied to similarly situated customers within the City's service area.

3.07 Long-Term Potable Water Supply. The City's source of water is groundwater pumped from the Edwards Aquifer/San Antonio region, and the City is located within the boundaries of the Edwards Aquifer Authority (the "Authority"). The Authority has been mandated by statute to limit the total amount of groundwater pumped within the boundaries of the Authority, which may result in a reduction in the amount of groundwater available to the City. The City agrees that it will undertake such planning and actions as are reasonably necessary and sufficient to enable the City to provide water service to Phase I, which is located within its certificated area, within the time periods set forth in the Development Schedule and Schedule of Water and Wastewater Facilities.

ARTICLE IV

Construction and Acquisition of Water and Wastewater Facilities

4.01 Water and Wastewater Facilities. In order to provide water and wastewater service to Phase I, it is necessary to construct certain improvements to the City's water and wastewater systems. The water and wastewater facilities necessary to provide service to Phase I (the "Water and Wastewater Facilities") are set forth in the Schedule of Water and Wastewater Facilities. Phase I will be developed in phases as noted on the Plum Creek Phase I PUD Master Plan, and the Water and Wastewater Facilities will be constructed in phases as development occurs. Notwithstanding any other term, provision or condition of this Agreement and/or any Exhibit hereto, it is understood, agreed and stipulated that the Impact Fee due and payable from time to time for or with respect to Phase I, Phase II or the Property, shall include amounts and increments for raw water contracts, raw water transmission lines, water treatment plant, and sewage treatment plant capacity costs; and that for such purpose and the purposes of this Agreement the cost of raw water, raw water transmission lines, water treatment plant capacity and sewer treatment plant capacity and such projects shall be deemed included in and may be added to the Capital Improvements Plan.

4.02 Schedule for Construction of the Facilities. The Parties agree that orderly and timely development of Phase I depends on the economy, acceptance of the development and product to be offered by Plum Creek, interest rates, successful marketing and other factors, including but not limited to the availability of water and wastewater services to Phase I. The Parties acknowledge that the schedule for construction of the Water and Wastewater Facilities shall be based on the actual and projected development of Phase I, adjusted to the extent reasonable based upon actual development. Plum Creek projects that Phase I will be developed according to the Development Schedule set forth in Exhibit "C" to this Agreement. Plum Creek shall review and revise the Development Schedule annually and provide a revised Development Schedule for the following 12-month period to the City on or before June 1 of each year.

4.03 Design of the Water and Wastewater Facilities.

a. The Water and Wastewater Facilities that are constructed by the City shall be designed by and the construction plans and specifications and supporting documents prepared by the City's engineer.

b. The part of the Water and Wastewater Facilities, if any, that Plum Creek is authorized by the City to construct pursuant to Section 4.05 of this Agreement will be designed by, and the construction plans and specifications and supporting documents prepared by, Plum Creek's Engineer, subject to review and approval by the City's engineer, and the design, construction and installation of any such Water and Wastewater Facilities by Plum Creek shall be subject to inspection by and approval of the City as set forth in Section 4.05 of this Agreement. As appropriate, the City agrees to coordinate with Plum Creek on specific design requirements and to review, approve, and sign the plans for each phase of the facilities in a timely manner.

4.04 Construction of the Water and Wastewater Facilities by the City.

a. Unless the City authorizes Plum Creek to construct any part of the Water and Wastewater Facilities pursuant to Section 4.05 of this Agreement, the City will cause such Water and Wastewater Facilities as necessary to provide service to that part of Phase I being then subdivided to be constructed in a timely manner to provide service to such areas of Phase I in accordance with the Development Schedule.

b. Construction contracts for the Water and Wastewater Facilities constructed by the City pursuant to this Section 4.04 shall be competitively bid by the City.

c. The award of the contract and the construction of the Water and Wastewater Facilities shall be to the extent reasonably practicable accomplished in a continuous process, and the construction shall be completed as soon as reasonably possible, consistent with generally accepted engineering and architectural standards and practices.

d. The Parties acknowledge that it is the intent of this Agreement that the Water and Wastewater Facilities constructed by the City be financed from Impact Fees assessed by the City and paid by Plum Creek. In order to facilitate the timely construction of facilities, Plum Creek may prepay Impact Fees in order to enable the City to construct Water and Wastewater Facilities in the event that the City has not yet assessed or collected Impact Fees, or has not collected Impact Fees in an amount sufficient to construct the facilities, and the Parties may agree that the City will commence advertising for bids and constructing the facilities prior to the time Plum Creek obtains City approval of a final subdivision plat for the part of Phase I to be served by the facilities. Should Plum Creek prepay any Impact Fees, the City shall issue to Plum Creek LUE Certificates in the amount of said prepayment, which may be used and applied by Plum Creek against the Impact Fee requirement for any part of Phase I subdivided thereafter. The Parties agree that Plum Creek may post with the City an irrevocable letter of credit issued by a federally insured financial institution approved by the City. As funds are needed to pay Water and Wastewater Facilities Costs, the City may draw down on such letter of credit or Plum Creek may pay funds directly to the City for such costs. The City shall deliver to Plum Creek

LUE Certificates each time the City draws on the letter of credit in the amount of such draw, or each time Plum Creek advances funds to the City in the amount of such advance. In the event that Plum Creek posts a letter of credit, Plum Creek may elect to make payments directly to the City rather than having the City draw on the letter of credit and, in such case, the City shall deliver to Plum Creek a letter authorizing Plum Creek to reduce the letter of credit by the amount of such direct payment by Plum Creek to the City.

e. If it is determined by the City that any of the Water and Wastewater Facilities should be constructed prior to the times set forth in the Development Schedule, the City shall provide Plum Creek with notice of the need to construct said facilities. Plum Creek shall have the right to construct such facilities upon written agreement of the City, and Plum Creek shall advise the City within 30 days of receipt of said notice whether Plum Creek desires to undertake the design and construction of such listed facilities. In the event Plum Creek does not exercise its right to construct such facilities, Plum Creek may prepay Impact Fees to facilitate construction of such facilities, in accordance with Section 4.04 of this Agreement, or may pay Impact Fees for each subdivision immediately prior to the time Plum Creek records each subdivision plat for Phase I, in accordance with Section 5.04 of this Agreement.

4.05 Construction of the Water and Wastewater Facilities by Plum Creek.

a. Plum Creek shall have the right to construct any part of the Water and Wastewater Facilities as authorized by written agreement executed by the City, in accordance with the procedures set forth in this Section 4.05.

b. Within 30 days of Plum Creek's receipt of City approval of a preliminary plat for part of Phase I, Plum Creek shall advise the City whether Plum Creek desires to construct the part of the Water and Wastewater Facilities necessary to provide service to that part of Phase I. If the City Council approves Plum Creek's request to construct such facilities, Plum Creek shall proceed as provided in this Agreement.

c. If Plum Creek constructs any part of the Water and Wastewater Facilities, Plum Creek shall be responsible for obtaining bids for construction in the manner provided by law for municipalities. The City Council shall have the opportunity to review all bids received by Plum Creek and shall approve by resolution each contract prior to its award.

d. Plum Creek shall prepare an estimate of the Water and Wastewater Facilities Costs for such facilities prior to awarding a contract for construction for such facilities, and Plum Creek shall submit said estimate to the City Council for its review and approval at the time the bid for construction is submitted for City approval. The estimated costs may be revised as necessary to incorporate revised costs resulting from change orders to contracts, provided that Plum Creek shall submit said revised costs to the City for approval.

e. Upon award of a contract for construction of any part of the Water and Wastewater Facilities by Plum Creek, Plum Creek shall pay, as they become due, all Water and Wastewater Facilities Costs for such facilities.

f. Plum Creek shall submit to the City any necessary change orders and the City agrees to review, approve and sign, as appropriate, any necessary change orders in a timely manner.

g. Plum Creek's Engineer shall inspect the Water and Wastewater Facilities being constructed, and the City shall provide periodic inspection during the construction.

h. Plum Creek agrees to construct facilities, constructed by Plum Creek pursuant to this Section, in a timely manner.

i. Upon the completion of construction and the City's acceptance of the part of the Water and Wastewater Facilities constructed by Plum Creek in accordance with this Agreement, Plum Creek shall convey the facilities constructed to the City and the City shall, in a timely manner, accept the facilities for ownership, operation, and maintenance; provided that from and after Plum Creek's conveyance of any such facilities the City shall provide water and wastewater services to Plum Creek, and in the event that the City fails or refuses to provide water and wastewater service, Plum Creek shall have such remedies as are provided at law or in equity, including, but not limited to, mandamus. X

j. The payment of Water and Wastewater Facilities Costs by Plum Creek pursuant to this Section 4.05 shall constitute the payment or the prepayment of Impact Fees by Plum Creek, and upon acceptance of the facilities by the City, the City shall issue to Plum Creek a receipt or receipts as appropriate (if such amounts are to be credited against the amount then due and payable as Impact Fees) or LUE Certificates (to the extent such amounts constitute a prepayment of Impact Fees) in the amount of said prepayment, which may be used and applied by Plum Creek against the Impact Fee requirement for any part of Phase I subdivided thereafter. Plum Creek shall be entitled to the issuance of LUE Certificates for prepaid Impact Fees to be used for and with respect to Phase I for Water and Wastewater Facilities Costs paid by Plum Creek to the extent that such costs do not exceed the actual amounts estimated therefor and approved by the City, or in the City's approval of any bid or contract, or increased by change order approved by the City.

4.06 Ownership of Water and Wastewater Facilities; Capacity Rights. The City shall own, operate, and maintain the Water and Wastewater Facilities upon completion and acceptance. Plum Creek shall have the right to obtain services and benefit from the capacity within the Water and Wastewater Facilities in order to obtain adequate service for development of Phase I.

4.07 City Oversizing of Facilities.

a. The Parties acknowledge that the Water and Wastewater Facilities as described in Exhibit "F" have been sized to serve the needs of Phase I at full build-out. In the event that the City desires to oversize any of the Water and Wastewater Facilities to serve customers not located within Phase I, the City shall finance and pay the increased cost of the Water and Wastewater Facilities Costs resulting from the oversizing; provided that Plum Creek shall fund and pay the full costs and expense of any oversizing reasonably required to provide future service to Phase II. X

b. Plum Creek shall be entitled to the issuance of LUE Certificates in the amount of the payment for oversizing to provide future service to Phase II, which may be used and applied by Plum Creek against the Impact Fee requirement for any part of Phase II subdivided thereafter or for any assessment imposed by the City thereafter against Phase II in order to generate revenue for funding or recouping the costs of capital improvements and facility expansions necessary to provide water and wastewater services to Phase II.

4.08 Land Provided by Plum Creek/Location of Facilities. The City shall purchase the sites for the water wells and storage tanks for potable water that are included in the Water and Wastewater Facilities. The site of any such facility that is located within Phase I shall be purchased by the City from Plum Creek for the sum of \$5,000.00 per acre. The part of the Water and Wastewater Facilities to be located within the Property, other than the water wells and water storage tanks that will be located on land deeded by Plum Creek in fee simple to the City, shall be constructed in dedicated public rights-of-way or utility easements granted by Plum Creek and dedicated to the City at no cost to the City.

4.09 Eminent Domain. The City agrees to provide use of all necessary and appropriate City lands, rights-of-way, and easements and to provide further required easements, or lands in fee simple, as may be necessary for the construction of the Water and Wastewater Facilities. It is acknowledged that there exists a public necessity for the Water and Wastewater Facilities and that the Water and Wastewater Facilities shall be part of the City's water and wastewater systems, and the City agrees to use its power of eminent domain to acquire such lands or easements for any part of the Water and Wastewater Facilities that is not located on the Property, if necessary, at no cost to Plum Creek.

ARTICLE V

Capital Improvements Plan, Impact Fees, and Credits

5.01 Capital Improvements Plan, Land Use Assumptions, and Impact Fees. The City's 1997 Capital Improvements Plan includes the capital improvements and facility expansions necessary to provide water and wastewater service to Phase I and provides for an impact fee sufficient to generate revenue for the City to fund or recoup the costs of such improvements and expansions. Phase I is part of the City's existing service area for imposition of impact fees in accordance with the provisions of Chapter 395 of the Texas Local Government Code, and the public hearing, update and adoption of the Capital Improvements Plan, including the Land Use Assumptions and Impact Fees, and the Water and Wastewater Facilities identified in the Schedule of Water and Wastewater Facilities, has been completed.

5.02 Procedures and Adoption of Impact Fee. The Parties agree and contract that, as between themselves, the City fully complied with all notice, process and procedural requirements, established by state law, in considering, hearing, acting on and adopting the Capital Improvements Plan, Land Use Assumptions and Impact Fees; and that the Water and Wastewater Facilities identified in the Schedule of Water and Wastewater Facilities are included within such Capital Improvements Plan and Impact Fee.

5.03 Assessment and Collection of Impact Fees; Credits.

a. Immediately prior to the time Plum Creek records each subdivision plat for Phase I, the Impact Fees for that subdivision shall be paid, subject to the terms of this Section 5.03.

b. The City shall apply any valid LUE Certificates tendered by Plum Creek and the approved cost and expense of any outstanding and unreimbursed engineering and other Water and Wastewater Facilities Costs incurred by Plum Creek with respect to such facilities designed and constructed by Plum Creek pursuant to this Agreement, to the cost of the Impact Fees required to be paid for such subdivision. If such costs of the Water and Wastewater Facilities necessary to provide service for such subdivision exceed the total amount of the Impact Fees due from Plum Creek for that subdivision or Plum Creek may prepay Impact Fees for other portions of Phase I in order to provide the City with funds necessary to construct the required facilities, and, in such event, the City shall issue Plum Creek an LUE Certificate for each prepaid Impact Fee.

5.04 Use of Funds to Reduce Fees. The City may spend funds from any lawful source to pay for all or part of the Water and Wastewater Facilities Costs.

5.05 Refunds for Impact Fees. As required by Section 395.025 of the Texas Local Government Code, on completion of the Water and Wastewater Facilities, the City shall recalculate the Impact Fee using the actual costs thereof and refund the difference between the Impact Fee paid and the Impact Fee based on actual cost, if the Impact Fee paid exceeds the Impact Fee based on actual cost by more than 10%. The City shall deduct from the Impact Fee based on actual cost any federal or state grant funds used by the City to finance the cost of the Water and Wastewater Facilities.

ARTICLE VI
Annexation of Property

6.01 Petitions for Annexation. The Parties anticipate that prior to approval of this Agreement by the City, Plum Creek and the Landowner shall have requested that the first portion of Phase I, being Phase I-A, be annexed. The Parties agree to the following process with respect to the annexation of Phases I-A, I-B and I-C:

a. The Landowner shall submit to the City a petition for annexation of that part of Phase I located within the City's ETJ at the time of submission, that is, "Phase I-A", which petition is attached as Exhibit "J" to this Agreement. Such annexation is subject to the following conditions, as set forth in the petition: (1) adoption by the City Council of the Plum Creek PUD Subdivision Ordinance; (2) adoption by the City Council of the Plum Creek PUD Zoning Ordinance, in accordance with Section 2.07 herein; and (3) approval by the City Council of this Agreement. The Parties specifically agree that in the event the City Council shall decline to annex Phase I-A, or to finally approve the Plum Creek Phase I PUD Master Plan, this Agreement, the approval of the Plum Creek Phase I PUD Master Plan as set forth in Section 2.03 of this Agreement, and each of the ordinances and actions referenced in Items 1 through 4 above in this section shall be null and void.

b. Immediately upon annexation by the City of Phase I-A, the Landowner shall submit a petition for annexation of that part of Phase I located within the City's ETJ at the time of submission, that is, Phase I-B, which petition is attached as Exhibit "J-1" to this Agreement. The Parties specifically agree that, in the event the City Council shall decline to annex Phase I-B, or to finally approve the Plum Creek Phase I PUD Master Plan, this Agreement, the approval of the Plum Creek Phase I PUD Master Plan and each of the ordinances and actions referenced above in Items 1 through 3 of Subsection 6.01(a) shall be null and void.

c. Immediately upon annexation by the City of Phase I-B, the Landowner will submit a petition for annexation of the part of Phase I located within the City's ETJ at the time of submission, that is Phase I-C, which petition is attached as Exhibit "J-2" to this Agreement. The Parties specifically agree that, in the event the City Council shall decline to annex Phase I-C, or to finally approve the Plum Creek Phase I PUD Master Plan, this Agreement, the approval of the Plum Creek Phase I PUD Master Plan and each of the ordinances and actions referenced in Items 1 through 3 of Subsection 6.01(a) shall be null and void.

d. The Parties specifically agree that in the event the City does not complete the annexation of Phase I-A, Phase I-B, and Phase I-C within four (4) months from the Effective Date of this Agreement, the Agreement shall be and become null and void. The City further agrees that, if the Agreement is nullified and voided, the City shall not pursue implementation of the service plans for Phase I-A, Phase I-B, or Phase I-C, as appropriate, in order to allow Plum Creek and the Landowner to pursue the disannexation of Phase I-A and/or Phase I-B, and/or Phase I-C, as appropriate, in as timely a manner as possible.

6.02 Annexation by City.

a. Upon the occurrence of all of the conditions precedent described in the petitions for annexation attached as Exhibits "J," "J-1," "J-2" (which are also listed in Section 6.01 of this Agreement), the City shall commence within the time and manner required by law the process necessary to consider annexing Phase I-A. In the event the City shall not annex Phase I-A, this Agreement shall be and become null and void.

b. After annexation of Phase I-A by the City, and upon receipt of the petition for annexation of Phase I-B, the City shall commence within the time and manner required by law the process necessary to consider annexing Phase I-B. Upon the occurrence of all of the relevant conditions precedent and subsequent described in the petition for annexation attached as Exhibit "J-1" (which conditions are also listed in Section 6.01 of this Agreement), the City shall commence within the time and manner required by law the process necessary to consider annexing Phase I-B. In the event the City shall not annex Phase I-B, this Agreement shall be and become null and void.

c. After annexation of Phase I-B by the City, and upon receipt of the petition for annexation of Phase I-C, the City shall commence within the time and manner required by law the process necessary to consider annexing Phase I-C. Upon the occurrence of all of the relevant conditions precedent and subsequent described in the petition for annexation attached as Exhibit "J-2" (which conditions are also listed in Section 6.01 of this Agreement), the City

shall commence within the time and manner required by law the process necessary to consider annexing Phase I-C. In the event the City shall not annex Phase I-C, this Agreement shall be and become null and void.

6.03 Agreement Regarding Extraterritorial Jurisdiction. As set forth in Section 2.01 of this Agreement and as depicted on the map attached hereto as Exhibit "A", a portion of the Property located north of County Road 171 is within the extraterritorial jurisdiction of Mountain City. The Parties hereto acknowledge that the City cannot annex areas that are located within Mountain City's ETJ. In order to provide for continuity of development of that part of the Property located within Mountain City's ETJ, the City hereby agrees to negotiate an agreement with Mountain City whereby Mountain City agrees to release that part of the Property from its ETJ so it can be included in the City's ETJ. In such event Plum Creek and the Landowner hereby request the City to include such area within the City's ETJ and the City will incorporate said area into its ETJ.

ARTICLE VII Municipal Services to Annexed Areas

7.01 Service Plans. The City is required to prepare a Service Plan for the part of Phase I being annexed (Phase I-A, Phase I-B, or Phase I-C) prior to the annexation of any such part of Phase I. The Service Plan shall be consistent with the terms of this Agreement.

7.02 Services to be Provided Upon Annexation. On and after the effective date of the annexation of all of Phase I by the City, the City shall provide Phase I with police protection; fire protection; solid waste collection; maintenance of roads and streets, including road and street lighting; and maintenance of public parks, recreational facilities, and any other publicly owned facility, buildings or services; and such services shall be provided, pursuant to all applicable City policies, and on the same basis as such services are provided to similarly situated areas of the City. The City will provide water and wastewater services to Phase I as set forth in Article III of this Agreement and such services shall be consistent with the level of services provided to other parts of the City with topography, land use and population density similar to that of Phase I.

7.03 Sites for Police and Fire Stations. After the effective date of the annexation of Phase I-C by the City and upon request of the City, Plum Creek shall provide at no cost to the City a site for a police station and a site for a fire station within the boundaries of Phase I. Such tracts shall be approximately two acres in size and shall be located and dedicated as determined by the City and Plum Creek. The City shall construct and operate a police station on such site for a police station requested by the City within three (3) years of the date such site is dedicated to the City by Plum Creek, or within such time frame as may be necessary to protect the public health, safety and welfare of the residents of Phase I. The City or the volunteer fire department shall construct and operate a fire station on any such site requested by the City for a fire station, within three (3) years of the date such site is dedicated to the City. Plum Creek may retain a reversionary interest in the land or interests in land deeded to the City pursuant to which the City's ownership interest in the land will revert to Plum Creek in the event that the land is not used for the dedicated purpose within three (3) years.

7.04 Street Lighting. Street lights shall be located as required by the Plum Creek Planned Unit Development Zoning Ordinance. The City shall assist and support Plum Creek in its request to the electric utility provider in the area for the provision of high pressure sodium street lights fixtures, and Plum Creek or the electric utility shall provide the secondary wiring, conduit, and light pole and install the street lights. Street light locations for each phase of development shall be coordinated by Plum Creek with the City prior to the approval of the construction plans for that phase. Plum Creek shall pay all the costs, fees and expenses for and with respect to such street lighting that are not paid by the electric utility as part of such utility's standard practices with respect to new subdivisions.

7.05 Failure or Refusal to Provide Services. The Parties acknowledge and agree that residents and property owners may pursue the remedy set forth in Section 43.141 of the Local Government Code if the City fails or refuses to provide services within the time specified in the Service Plans. Such remedy is in addition to any other remedies set forth in this Agreement.

ARTICLE VIII Miscellaneous

8.01 Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

8.02 Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the Parties hereto.

8.03 County Approvals. The City agrees that Plum Creek may seek necessary approvals from Hays County, of subdivisions approved by the City pursuant to this Agreement, on an expedited basis.

8.04 Coordination of City Reviews. The implementation of the Plum Creek Phase I PUD Master Plan shall be in accordance with State law, the subdivision and zoning review processes of the City, and as set forth in this Agreement and the ordinances attached as Exhibits "D" and "E" to this Agreement, and the other applicable ordinances in effect on the execution date hereof that are not inconsistent with or in conflict with the Plum Creek PUD Subdivision Ordinance and the Plum Creek PUD Zoning Ordinance. The City and Plum Creek acknowledge that Plum Creek may desire to proceed expeditiously with the development of Phase I, and that the City will comply with the timelines for review set forth in its ordinances governing such division and zoning review processes. Further, Plum Creek agrees that it will comply with this Agreement and the applicable ordinances of the City.

8.05 Assignability. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. The Landowner and Plum Creek shall have the right to assign their rights under this Agreement to run with the ownership of Phase I, including any written agreements or permits Plum Creek may have with regard to prepaid Impact Fees, to subsequent purchasers or developers of any part of Phase I. The Landowner and Plum Creek

shall provide the City with 30 days written notice of their intent to assign their rights under this Agreement. Plum Creek and the Landowner agree that a contract of sale for all or any part of the Property and an assignment of their rights under this Agreement to subsequent purchasers or developers shall require the purchaser and assignee to develop the Property in accordance with the terms of this Agreement and all exhibits hereto. In the event Plum Creek and the Landowner assign their rights under this Agreement to a subsequent purchaser or developer, the City agrees to release any existing Letter of Credit posted by Plum Creek with the City upon substitute surety bond or letter of credit, satisfactory to the City, being posted by the assignee.

8.06 Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

8.07 Force Majeure. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars, of such force majeure to each of the other parties within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent affected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

8.08 No Additional Waiver Implied. The failure of any party hereto to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as waiver or relinquishment of the future performance of any term, covenant, or condition by the other parties hereto, but the obligation of such other parties with respect to such future performance shall continue in full force and effect.

8.09 Remedies. The Parties recognize that certain of their respective obligations, if not performed, may be adequately compensated by money damages while others could not be. Accordingly, the Parties agree that in the event of any failure to perform any covenants, conditions, or obligations of this Agreement on the part of any party, the aggrieved party shall:

(a) to the extent, if any, permitted by law, have the remedy of specific performance of this Agreement, in addition to any other remedies otherwise available at law or in equity or under this Agreement; and

(b) either the City or Plum Creek and the Landowner, acting in concert, hereto may terminate this Agreement by written notice, after such party has given notice of a material default to the other party pursuant to Section 8.06, upon the expiration of the thirty (30) days permitted for curing such default and such default not having been cured.

8.10 Choice of Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be performable at Hays County, Texas.

8.11 Regulatory Agencies. This Agreement shall be subject to all applicable and valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction. The parties will obtain and maintain all governmental approvals and will comply with all pertinent governmental requirements, including permit conditions.

8.12 Reservation of Police Powers. Notwithstanding any other term, provision or clause of this Agreement, (a) all fees and charges payable by Plum Creek or Landowner during the subdivision and development process of Phase I, whether pursuant to this Agreement or otherwise, shall be subject to periodic adjustment by the City; and (b) the development of Phase I shall be accomplished in full compliance with this Agreement and all construction in Phase I shall be subject to the standards and requirements of the codes and ordinances of the City, as amended from time to time, and all applicable state laws.

8.13 Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party must be in writing and may be given or served in any manner reasonably calculated to reach each of the other parties. Notice sent by certified or registered mail, postage prepaid, return receipt requested, shall be deemed to have been received on the second mail delivery day following the day on which it is posted. Notice by any other method shall be effective when received. For the purpose of Notice, the addresses of the Parties shall be, until changed as hereafter provided, as follows:

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: Director of Public Works
P.O. Box 40
Kyle, Texas 78640

Any notice mailed to Plum Creek shall be addressed:

William Negley, Trustee
1250 Northeast Loop 410
Suite 200
San Antonio, Texas 78209

BGI Plum Creek Developers, Ltd.
Attn: David Mahn
816 Congress Avenue, #1265
Austin, Texas 78701

Any notice mailed to Landowner shall be addressed:

William Negley, Trustee
1250 Northeast Loop 410
Suite 200
San Antonio, Texas 78209

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

8.14 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire Agreement between Parties hereto, and may not be amended except by writing, which shall be signed by all Parties and dated subsequent to the date hereof.

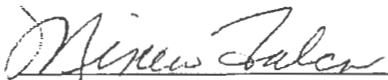
8.15 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience of reference and shall never be considered or given any effect in construing this Agreement.

8.16 Parties at Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall never be construed to confer any benefit on any third party except as otherwise provided in this Agreement. In the event of a third-party lawsuit, a taxpayer suit, or other claim relating to the validity of this Agreement or actions taken pursuant to this Agreement, the City and Plum Creek agree to cooperate in the defense of such claim and the City and Plum Creek shall use their respective best efforts to resolve the conflict in the mutual best interests of the City and Plum Creek.

8.17 Term. This Agreement shall be in force and effect from the date of execution hereon for a term of 15 years; provided, however, that Plum Creek's right pursuant to Article V hereof to receive a deduction or offset for Water and Wastewater Facilities Costs incurred or Impact Fees prepaid by Plum Creek from Impact Fees subsequently assessed by the City shall survive the termination of this Agreement. If Plum Creek determines that the development of Phase I pursuant to the Plum Creek Phase I PUD Master Plan will not be completed within the 15-year term of this Agreement, Plum Creek may submit a written request to the City to extend the term of the Agreement for up to an additional five (5) years and the City may so extend the Agreement as requested by Plum Creek. If Plum Creek submits a proposed amendment to the Plum Creek Phase I PUD Master Plan for the development of Phase II, and such amendment is approved by the City, the City may further extend the term of this Agreement to allow for the development of Phase II.

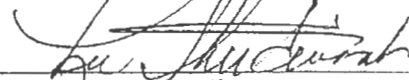
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date and year set forth on the first page hereof.

Attest:



Minerva Falcon, City Secretary

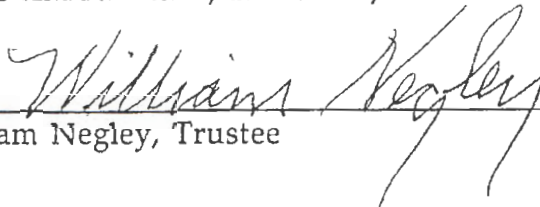
THE CITY OF KYLE



Name: Lee Sturdivant
Title: Mayor

PLUM CREEK DEVELOPMENT PARTNERS, LTD.


WILLIAM NEGLEY, TRUSTEE, Partner



William Negley, Trustee

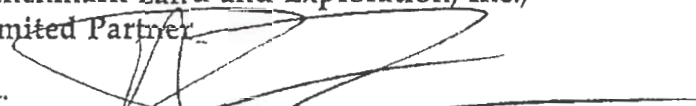
BGI PLUM CREEK DEVELOPERS, LTD., Partner

Benchmark Land Development, Inc.,
General Partner

By: 

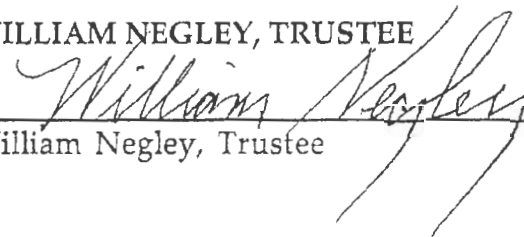
David C. Mahn, Vice President

Benchmark Land and Exploration, Inc.,
Limited Partner

By: 

David C. Mahn, Vice President

WILLIAM NEGLEY, TRUSTEE



William Negley, Trustee

COUNTY OF HAYS §

STATE OF TEXAS §

ADDENDUM NUMBER ONE

AGREEMENT BETWEEN THE CITY OF KYLE, PLUM CREEK
DEVELOPMENT PARTNERS, LTD., AND WILLIAM NEGLEY, TRUSTEE, FOR
DEVELOPMENT AND ANNEXATION OF PHASE I OF
THE PLUM CREEK RANCH PROPERTY

This Addendum Number One ("Addendum") is made to the Agreement Between the City of Kyle, Plum Creek Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property (the "Agreement"), effective as of the 15th day of April 1997, by and between the City of Kyle, Texas (the "City"), a Texas home-rule municipal corporation, and the Plum Creek Development Partners, Ltd., a Texas limited partnership ("Plum Creek"), and Mountain Plum, Ltd., a Texas limited partnership, (collectively the "Developer"). This Addendum is effective as of the 28th day of March, 2003. The City and the Developer are sometimes referred to herein jointly as the "Parties."

Whereas, the Agreement included provisions providing for the land described in Exhibit "A" hereto ("Phase II") to be added to Phase I (as defined in the Agreement) and be included within and subject to the Agreement;

Whereas, pursuant to § 2.09 and other provisions of the Agreement, the Developer has the right to integrate and include Phase II within the terms and provisions of the Agreement by executing an addendum to the Agreement, or by filing and obtaining approval of a Plum Creek Phase II Master Plan;

Whereas, each, every and all of the terms, provisions and conditions of the Agreement shall remain in full force and effect, save and except only as specifically amended in this Addendum, or as reasonably implied from the terms and content of this Addendum and the Agreement;

Whereas, as authorized by § 8.05 of the Agreement, Negley assigned and transferred a portion of his interest in the Agreement to Mountain Plum, Ltd, subject to all of its terms and conditions; and

Whereas, unless a definition is amended or a word is specifically defined in this Addendum, the capitalized terms used above and herein shall have the same meaning as given in the Agreement;

NOW, THEREFORE, The Parties hereby contract, covenant and agree that this Addendum is made as provided for in the Agreement, and the terms of this Addendum are as follows:

Section 1. The Agreement shall be applicable to Phase II, consisting of the land described in Exhibit "A" attached hereto and incorporated herein for all purposes. As provided in the Agreement, Phase II will be platted and zoned pursuant to the Plum Creek PUD Subdivision Ordinance and the Plum Creek PUD Zoning Ordinance, and all other applicable ordinances and

regulations of the city in effect on the date of this Addendum shall be applicable to Phase II.

Section 2. To implement and give full effect to this Addendum and Phase II, Developer shall:

- (a) Prepare and submit to the City for review and approval the Plum Creek Phase II Master Plan pursuant to the Agreement;
- (b) Make an administratively complete application for Planned Unit Development Zoning for Phase II;
- (c) Prepare and submit for review and approval by the City a comprehensive plan for providing Phase II with adequate water and wastewater service and facilities;
- (d) Prepare and submit for City review and approval a Development Schedule for Phase II (the "Development Schedule"); and
- (e) After final approval by the City of the Plum Creek Phase II Master Plan, with modifications (if any) required by the City, the Development Schedule, and the plan for water and wastewater service and facilities, and the City adopting an ordinance zoning all of Phase II as a planned unit development, develop and plat land and subdivisions within Phase II in compliance with this Addendum.

The City's review and final action on the foregoing will not be unreasonably withheld, delayed or conditioned.

Section 3. The Parties further agree that the development schedule for Phase II may be subject, from time to time, to the City having available adequate water and water facilities and adequate wastewater transmission and treatment facilities to serve the segment or section of Phase II then being developed and platted. The City has provided water and wastewater service to Phase I, and will provide water and wastewater service to Phase II subject to sufficient capacity being available from time to time for wastewater treatment, wastewater transmission, water treatment, potable water and water transmission. Phase II, when fully developed, may require more potable water and wastewater treatment and transmission capacity than originally planned for in the Agreement. The City will include the water and wastewater volumes provided in § 3.02 of the Agreement, as being required for Phase II, in the City's planning of future service and demands, and will provide service to Phase II on reasonable terms and conditions, provided that sufficient water is available and water and wastewater treatment and transmission capacities are available, following City approval of the Plum Creek Phase II Master Plan and the Development Schedule. The City will use reasonable efforts and take reasonable action to ensure the availability of sufficient water and wastewater to serve Phase II. If additional water and wastewater capacity is required for Phase II, as finally approved by the City, the City will include such reasonable additional volumes of capacity in its future planned levels of service to Phase II. The approval of any section or plat of Phase II for development and construction may be subject to delay and moratorium as reasonably required to assure adequate water and

wastewater capacities are available to serve such section or plat as built.

Section 4. If the City requires the Developer to provide land for water pump stations or water storage facilities that are not required to serve Phase II, such land will be acquired by the City pursuant to § 4.08 of the Agreement; provided that the price per acre shall be \$15,000.00.

Section 5. Except as modified by this Addendum, or as reasonably implied from the terms or content of this Addendum, all terms, conditions and provisions of the Agreement shall remain in full force and effect as therein stated.

Section 6. Each of the Parties represent and agree that they have closely read and reviewed the Agreement and this Addendum, and that all the terms, provisions and conditions of such Agreement and this Addendum are binding and enforceable in accordance with the terms, provisions and conditions thereof.

EXECUTED in multiple originals and effective as of the 20th day of March 2003.

City of Kyle, Texas

By: James L. Adkins
Name: James Adkins
Title: Mayor

Mountain Plum, Ltd.
A Texas limited partnership

By: MP General LLC
A Texas limited liability company, general partner

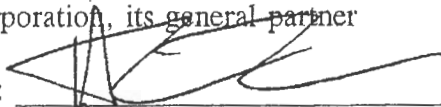
By: Richard B. Negley
Name: Richard B. Negley
Title: Manager

By: Laura N. Gill
Name: Laura N. Gill
Title: Manager

Plum Creek Development Partners, Ltd.
a Texas limited partnership

By: BGI Plum Creek Developers, Ltd., General Partner

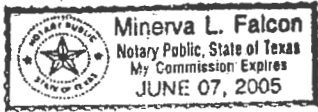
By: Benchmark Land Development, Inc., a Texas corporation, its general partner

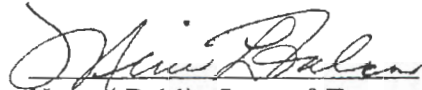
By: 
Name: DAVID C. MANN
Title: VICE PRESIDENT

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 20th day of March, 2003, by James Adkins, Mayor of the City of Kyle, a Texas home-rule municipal corporation, on behalf of the city.

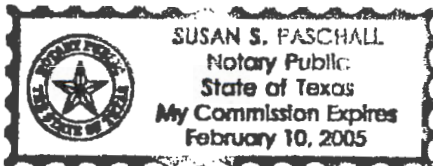



Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Brewer §

This instrument was acknowledged before me on the 11th day of March, 2003, by Richard B. Negley, Manager, acting on behalf of MP General LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.

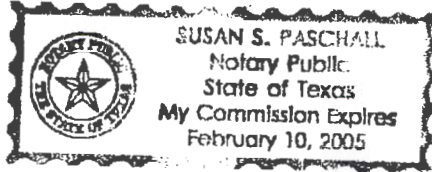



Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Brewer §

This instrument was acknowledged before me on the 17th day of March 2003, by Laura N. Gill, Manager, acting on behalf of MP General LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.



Susan S. Paschall
Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Trawis §

This instrument was acknowledged before me on the 6 day of March, 2003, by Davis Mann, Vice President, acting on behalf of Benchmark Land Development, Inc., a Texas corporation, as general partner of BGI Plum Creek Developers, Ltd., general partner of Plum Creek Development Partners, Ltd.



Sherry L. Quick
Notary Public-State of Texas

EXHIBIT "A"

TRACT 1

DESCRIPTION OF 533.797 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, AND THE JOHN COOPER SURVEY, A-100, AND THE JESSE DAY SURVEY, A-152, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

PART OF 51.3 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 25.9 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 51.2 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 28 ACRES RECORDED IN VOLUME 125, PAGE 69
PART OF 11 ACRES RECORDED IN VOLUME 127, PAGE 139
PART OF 38.7 ACRES RECORDED IN VOLUME 127 PAGE 139
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 136 ACRES RECORDED IN VOLUME 130, PAGE 477
PART OF 849.267 ACRES RECORDED IN VOLUME 322, PAGE 584
ALL OF 51.1 ACRES RECORDED IN VOLUME 123, PAGE 545
ALL OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEGLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 533.797 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS :

COMMENCING at the most southwesterly corner, being the intersection of the south right-of-way of County Road (CR) 171 and the east right-of-way of Farm to Market Road (FM) 2770 in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the east right-of-way of FM 2770 the following six (6) courses and distances:

1. North $00^{\circ}51'52''$ East a distance of 175.86 feet for an angle point,
2. With a curve to the right having a radius of 1839.94 feet, a chord bearing North $13^{\circ}22'05''$ East a distance of 151.25 feet and an arc length of 151.30 feet for an angle point,
3. North $15^{\circ}43'26''$ East a distance of 616.61 feet for an angle point,
4. With a curve to the left having a radius of 2970.31 feet, a chord bearing North $12^{\circ}48'20''$ East, a distance of 302.45 feet and an arc length of 302.58 feet for an angle point,

5. North $09^{\circ}53'14''$ East a distance of 1255.37 feet for an angle point,
6. With a curve to the right having a radius of 5659.84 feet, a chord bearing North $11^{\circ}13'38''$ East, a distance of 264.71 feet and an arc length of 264.74 feet for an angle point,

THENCE, leaving the east right-of-way of FM 2770 and crossing the said 28 acre tract, the 331 acre tract, the 38.7 acre tract, the 25.9 acre tract, the 11 acre tract, the 201.14 acre tract, the 51.3 acre tract, and the 51.2 acre tract the following 18 courses and distances:

1. South $77^{\circ}26'16''$ East a distance of 400.00 feet for an angle point,
2. North $12^{\circ}34'03''$ East a distance of 553.43 feet for an angle point,
3. With a curve to the right having a radius of 2394.92 feet, a chord bearing North $15^{\circ}57'48''$ East, a distance of 283.73 feet and an arc length of 283.90 feet for an angle point,
4. North $19^{\circ}21'33''$ East a distance of 79.52 feet for an angle point,
5. North $07^{\circ}51'29''$ East a distance of 102.00 feet for an angle point,
6. North $19^{\circ}21'50''$ East a distance of 1451.67 feet for an angle point,
7. With a curve to the left having a radius of 32,861.24 feet, a chord bearing North $17^{\circ}36'59''$ East distance of 455.63 feet and an arc length of 455.63 feet for an angle point,
8. North $88^{\circ}11'33''$ East a distance of 1618.79 feet for an angle point,
9. North $01^{\circ}48'32''$ West a distance of 923.80 feet for an angle point,
10. North $88^{\circ}09'27''$ East a distance of 1016.41 feet for an angle point,
11. With a curve to the left having a radius of 2964.79 feet, a chord bearing South $12^{\circ}12'03''$ East a distance of 962.99 feet and an arc length of 967.28 feet for an angle point,
12. South $21^{\circ}32'51''$ East a distance of 1391.42 feet for an angle point,
13. With a curve to the right having a radius of 2764.79 feet, a chord bearing South $08^{\circ}55'11''$ East a distance of 1208.85 feet and an arc length of 1218.69 feet for an

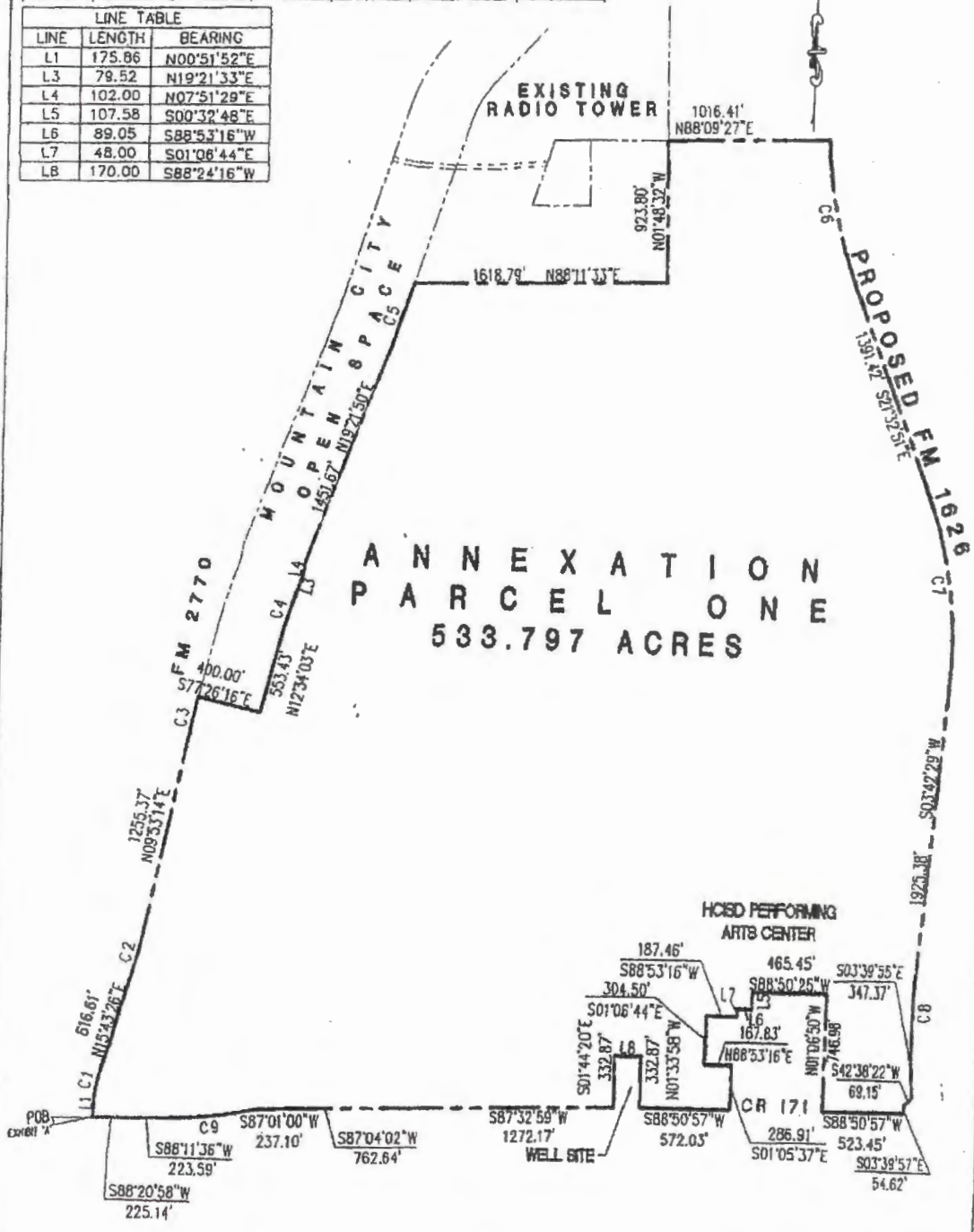
CURVE TABLE

CURVE	DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
C1	4°42'41"	151.30'	75.69'	1839.94'	N13°22'05"E	151.25'
C2	5°50'12"	302.58'	151.42'	2970.31'	N12°48'20"E	302.45'
C3	2°40'48"	284.74'	132.39'	5659.84'	N11°13'38"E	264.71'
C4	6°47'31"	283.90'	142.12'	2394.92'	N15°57'48"E	283.73'
C5	0°47'40"	455.63'	227.82'	32851.24'	N17°36'59"E	455.63'
C6	18°41'35"	967.28'	487.87'	2964.79'	S12°12'03"E	982.99'
C7	25°15'19"	1218.69'	619.41'	2764.79'	S08°55'11"E	1208.85'
C8	7°22'24"	381.54'	191.03'	2964.79'	S00°01'17"W	381.27'
C9	12°39'17"	597.28'	299.86'	2704.24'	S82°23'43"W	596.07'

LINE TABLE

LINE	LENGTH	BEARING
L1	175.86	N00°51'52"E
L3	78.52	N19°21'33"E
L4	102.00	N07°51'29"E
L5	107.58	S00°32'48"E
L6	89.05	S88°53'16"W
L7	48.00	S01°06'44"E
L8	170.00	S88°24'16"W

SCALE: 1" = 800'



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYLE, TEXAS



HOWARD ENGINEERS, INC.
4303 Russell Drive
Austin, Texas 78704
Phone: 512-448-0881
Fax: 512-448-0989
Email: howrdsgn@swbell.net

TRACT 2

DESCRIPTION OF 318.184 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

**PART OF 100 ACRES RECORDED IN VOLUME 116, PAGE 209
PART OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 208
ALL OF 51.1 ACRES RECORDED IN VOLUME 119 PAGE 517
ALL OF 211 ACRES RECORDED IN VOLUME 116, PAGE 209**

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEOLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 318.184 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at the most southeasterly corner, being the intersection of the south right-of-way of County Road 171 and the west right-of-way of the Union Pacific Railroad in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the south right-of-way of CR 171 the following two (2) courses and distances:

1. South 89°05'48" West a distance of 1344.53 feet to an angle point,
2. South 88°50'57" West a distance of 282.31 feet to an angle point,

THENCE, leaving the south right-of-way line of CR 171 and crossing the said 100 acre tract the following 11 courses and distances:

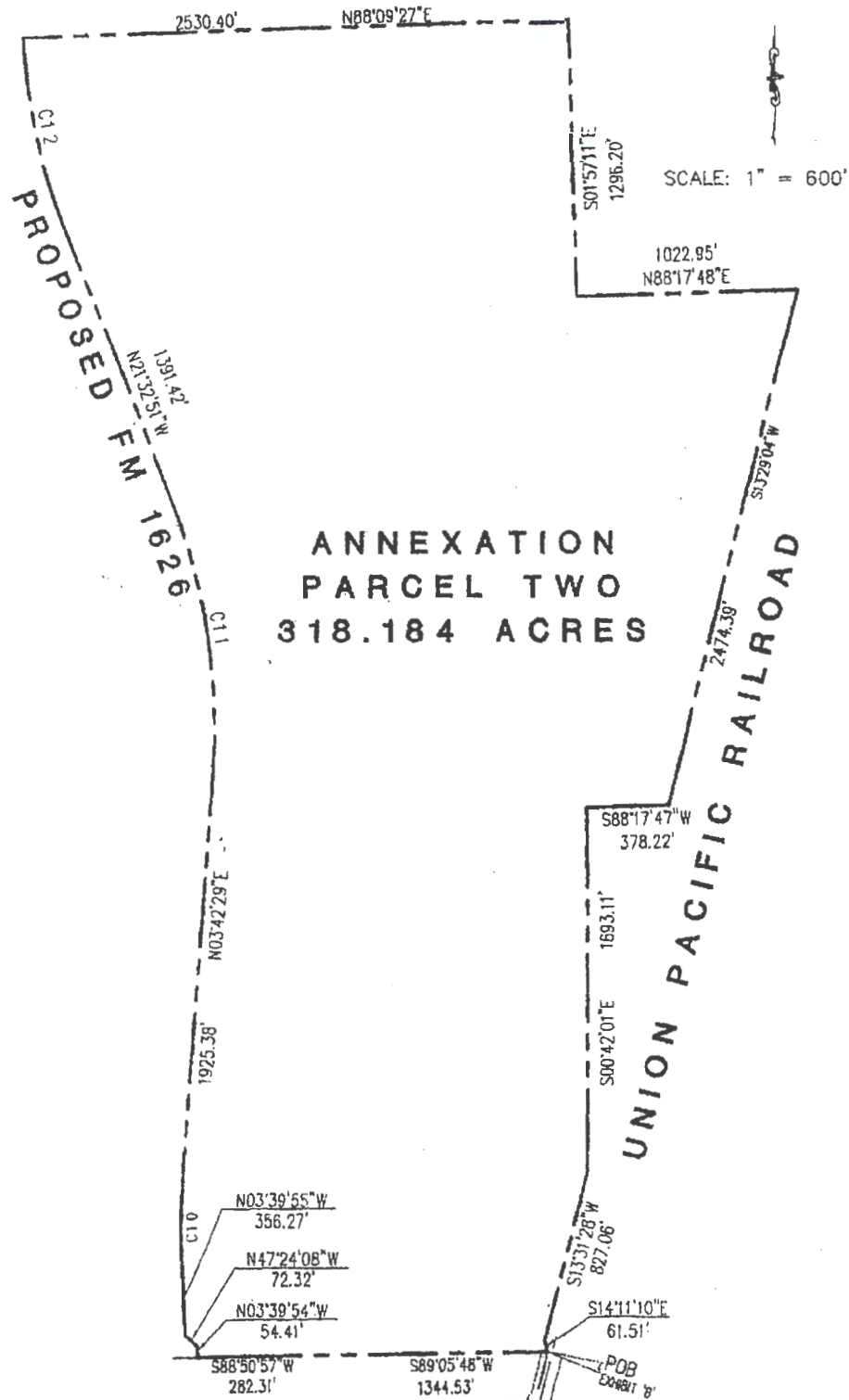
1. North 03°39'54" West a distance of 54.41 feet to an angle point,
2. North 47°24'08" West a distance of 72.32 feet to an angle point,
3. North 03°39'55" West a distance of 356.27 feet to an angle point,
4. With a curve to the right having a radius of 2764.79 feet, a chord bearing North 00°01'17" East, a distance of 355.55 feet and an arc length of 355.80 feet to an angle point,
5. North 03°42'29" East a distance of 1925.38 feet to an angle point,

6. With a curve to the left having a radius of 2964.79 feet, a chord bearing North $08^{\circ}55'11''$ West, a distance of 1296.30 feet and an arc length of 1306.85 feet to an angle point,
7. North $21^{\circ}32'51''$ West a distance of 1391.42 feet to an angle point,
8. With a curve to the right having a radius of 2764.79 feet, a chord bearing North $12^{\circ}14'15''$ West, a distance of 894.54 feet and an arc length of 898.49 feet to an angle point for the northwesterly corner of the tract described herein,
9. North $88^{\circ}09'27''$ East a distance of 2530.40 feet to an angle point,
10. South $01^{\circ}57'11''$ East a distance of 1296.20 feet to an angle point,
11. North $88^{\circ}17'48''$ East a distance of 1022.95 feet to an angle point being on the west right-of-way of the Union Pacific Railroad;

THENCE, with the right-of-way of the Union Pacific Railroad the following five (5) courses and distances:

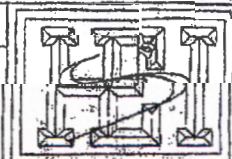
1. South $13^{\circ}29'04''$ West a distance of 2474.39 feet to an angle point,
2. South $88^{\circ}17'47''$ West a distance of 378.22 feet to an angle point,
3. South $00^{\circ}42'01''$ East a distance of 1693.11 feet to an angle point,
4. South $13^{\circ}31'28''$ West a distance of 827.06 feet to an angle point,
5. South $14^{\circ}11'10''$ East a distance of 61.51 feet to the **POINT OF BEGINNING** and containing 318.184 acres more or less.

CURVE TABLE						
CURVE	DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
C10	7°22'24"	355.80'	178.15'	2764.79'	N00°01'17"E	355.65'
C11	25°15'19"	1306.85'	664.21'	2964.79'	N08°55'11"W	1296.30'
C12	18°37'11"	898.49'	453.24'	2764.79'	N12°14'15"W	894.94'



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYLE, TEXAS



HOWARD ENGINEERS, INC.
4303 Russell Drive
Austin, Texas 78704
Phone: 512-448-0881
Fax: 512-448-0889
Email: howrdsgn@swbell.net

COUNTY OF HAYS §

STATE OF TEXAS §

ADDENDUM NUMBER TWO

to the

AGREEMENT BETWEEN THE CITY OF KYLE, PLUM CREEK
DEVELOPMENT PARTNERS, LTD., AND WILLIAM NEGLEY, TRUSTEE,
FOR DEVELOPMENT AND ANNEXATION OF PHASE I OF
THE PLUM CREEK RANCH PROPERTY

This Addendum Number Two ("Addendum Number Two") is made to the Agreement Between the City of Kyle, Plum Creek Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property (the "Agreement"), effective as of the 7th day of September 2004 (the "Effective Date"), by and between the City of Kyle, Texas (the "City"), a Texas home-rule municipal corporation, the Plum Creek Development Partners, Ltd., a Texas limited partnership ("Plum Creek"), and Mountain Plum, Ltd. ("Mountain Plum") (collectively the "Development Parties"). The City and the Development Parties are sometimes referred to herein jointly as the "Parties."

Whereas, the Agreement was extended to include the two tracts of land described in Exhibits "A" and "B" hereto (the "Land" or "Phase II") by the execution and delivery of Addendum Number One to the Agreement, and the Agreement was assigned to Mountain Plum by Addendum Number One;

Whereas, each, every and all of the terms, provisions and conditions of the Agreement, as amended or modified by Addendum Number One, shall be and remain in full force and effect subject to the terms of this Addendum Number Two;

Whereas, Plum Creek executed the Development Agreement with Respect to the Widening and Expansion of FM 1626, dated November 7, 2000, regarding the design and construction of FM 1626 (the "FM 1626 Agreement");

Whereas, the Development Parties represent that William Negley, as Trustee or Individually, no longer has any interest in the Land or the Agreement, and is not a necessary or proper party to this Addendum Number Two;

Whereas, the Parties are in dispute regarding the funding and construction of FM 1626 and the liability of Plum Creek under the FM 1626 Agreement; and

Whereas, Plum Creek and the City executed and delivered the Release, Compromise and Settlement Agreement, dated as of the date hereof, to resolve the disputes arising under the FM 1626 Agreement, and this Addendum Number Two is the primary consideration given by the Development Parties for execution of the Release, Compromise and Settlement Agreement;

NOW, THEREFORE, for and in consideration of the City executing and delivering the Release, Compromise and Settlement Agreement and Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and confessed, and the benefits to accrue to the Parties, the Parties hereby contract, covenant and agree as follows:

Section 1. The consideration to be given and provided to the City by the Development Parties pursuant to this Addendum Number Two, including specifically the payment of all fees and charges as provided in Section 3 below, the donation and transfer of the tracts or parcels of the Land as provided in Section 2 below, and the strict performance by the Development Parties of each and every duty and responsibility set forth in this Addendum Number Two, is in addition to and not in lieu of the prior donations and contributions heretofore made by Plum Creek to the design and construction of FM 1626. Such prior donations and contributions include, but are not limited to: (a) the dedication of 52 acres having a value of \$728,000.00, as right-of-way for FM 1626; (b) expending \$1,620,208.00 for planning, engineering and other costs for the development of FM 1626; (c) contracting to pay a third party an additional \$240,551.00 for engineering services for the design, plans and specifications for FM 1626; and (d) causing a third party to expend in excess of \$250,000.00 pursuant to a joint venture with Plum Creek to fund other costs and expenses for the development of FM 1626; and (e) the donation of twenty-two (22) acres to HCISD for a public school site valued at \$254,000.

Section 2. The Development Parties agree to and shall donate and convey to the City fee simple title to various tracts and parcels of the Land, as provided in this Section.

(a) The Development Parties will donate and convey to the City fee simple title to tracts and parcels of the Land, as follows:

(i) approximately twenty-four (24) acres to be conveyed by the Development Parties to the City in one or more tracts, at various locations in Phase II proposed by the Development Parties and approved by the City in its discretion, with such tract(s) all having public thoroughfare access and being for the sole purpose of providing locations for public facilities and related amenities; provided that the City will not locate or place any of the facilities or amenities listed in the attached Exhibit "C" on any tract conveyed to the City pursuant to this Section 2;

(ii) approximately ten (10) acres at a location proposed by the Development Parties and approved by the City in its discretion in consultation with the Hays Consolidated Independent School District ("HCISD") solely for the purpose of providing an elementary school facility site; and

(iii) approximately eight (8) acres of land as additional ROW for Kohler's Crossing Road, which ROW shall be at a location and dimension identified and surveyed based on the design, plans and specifications for construction of the road based on

plans prepared by engineers on behalf of Hays County, Texas; and such ROW shall be conveyed to the City at such time as the City advises the Development Parties that the ROW is required for actual bid and construction of the road.

(b) The tracts and parcels of Land referenced in the foregoing paragraph (a) as identified and proposed by the Development Parties and that are approved and accepted by the City in its sole discretion are sometimes hereinafter referred to collectively as the "Public Parcels". The Public Parcels may consist of any part or portion of Phase II that is approved in its discretion by the City, and the Parties will make a mutually cooperative effort to identify and select tracts to be conveyed that are acceptable to all the Parties, and the City may require the Development Parties to propose additional tracts for consideration and not be limited to consideration of the tracts proposed by the Development Parties. If the City and Development Parties are unable to mutually agree on the location of one or more of the Public Parcel sites the location of the site shall be submitted to binding arbitration by the Parties. The Public Parcels will be conveyed to the City, as follows:

(i) During the overall development, land planning and subdivision process of Phase II, the Development Parties shall identify and propose to the City various potential sites within Phase II for use as Public Parcel(s) which shall be utilized for (A) siting and eventual construction of public improvements/facilities and/or (B) the construction of an elementary school facility as provided above. The Development Parties shall, in any event, propose the potential sites to the City in a timely manner after the Effective Date and convey the Public Parcels to the City on or before September 7, 2014, unless extended in writing by the governing body of the City.

(ii) Based on the various tracts identified and proposed by the Development Parties, the City will consult with the HCISD to mutually agree upon and ultimately accept one (1) of the proposed sites for the contemplated elementary school site ("School Tract"). Otherwise the City shall have full and complete discretion in the approval, selection and ultimate acceptance of the tracts or parcels of the Land comprising the Public Parcels to be conveyed to the City by the Development Parties, subject to arbitration as provided above.

(iii) Once the City (with consultation with HCISD as appropriate), approves and elects to accept one or more of the tracts, written notice of such election shall be given to the Development Parties by the City by written instrument hand delivered to Mountain Plum, Ltd. and Plum Creek Development Partners, Ltd. or mailed to the Development Parties, c/o Mountain Plum, Ltd. and Plum Creek Development Partners, Ltd.

(iv) Conveyance of the Public Parcels will occur within ten (10) days after approval of the final plat of such approved tract(s) by the City.

(v) The Public Parcels will be conveyed by the Development Parties to the City by

special warranty deed without any cost, expense, fee or charge whatsoever to the City.

(c) The conveyance instrument for the School Tracts only referenced above shall include:

(i) a reverter clause that provides that: (A) such tract or parcel will revert to the Development Parties unless (I) conveyed to the HCISD within five (5) years after the date of the conveyance from the Development Parties to the City; and (II) HCISD commences construction on such tract or parcel of an elementary public school within three (3) years of its receipt of such tract or parcel from the City; and (B) the reverter clause automatically lapses and expires if the conditions set out above in this paragraph are timely satisfied, and in such event upon HCISD's written representation that it will complete construction within three years after the commencement date, the deed will become absolute;

(ii) the following, or substantially similar, provision, to-wit: "If the property is conveyed to the Hays Consolidated Independent School District ("HCISD") the consideration to be given the City by HCISD shall be less than the then fair market value of the property; provided that the consideration may be for any lesser value as agreed between the City and HCISD"; and

(iii) a reverter clause that provides such tract or parcel will revert to the Development Parties unless HCISD constructs a public school on the tract or parcel within three (3) years after the date of the conveyance from the City to HCISD, with provision that the reverter clause will automatically lapse and expire and the deed will become absolute if (A) the School Tract is conveyed by the City to HCISD within five (5) years of the conveyance from the Development Parties and (B) the construction of an elementary public school is commenced on the School Tract within three (3) years after the date of conveyance from the City; provided HCISD represents in writing that it will complete construction within three years after the commencement date.

Section 3. In addition to any and all other typical and standard taxes, fees and charges that may be or become due and payable to the City from time to time for or with respect to the Land or any related development, construction or services, the Development Parties and their grantees, successors and assigns shall pay a special fee and charge to the City when application is made for a building permit for any building or facility to be located on a lot, tract or parcel of the Land which requires the purchase of LUEs (as hereinafter defined) for either initial water service or additional water service/demand. The charge shall be an amount equal to \$500.00 ("Special Fee") multiplied by the number of living unit equivalents ("LUEs") required by City Ordinance # 298-1, as amended from time to time, adopted pursuant to Chapt. 395, Tex. Loc. Gov't. Code, or any ordinance replacing or substituting for such ordinance, to be purchased for water service for the building and the proposed

occupancy and use thereof. The Special Fee shall be paid at the time the building permit is applied for, and shall be due and payable for and with respect to all building permit applications made for a building to be constructed on the Land. The Special Fee due and payable for each such building permit shall be \$500 multiplied by the number of LUEs required for water service to the building, and the proposed occupancy and use of the building. Although calculated for convenience based on LUEs, the fees provided in this Section 3 are not impact fees. All Special Fees paid by the Development Parties and collected by the City shall be deposited in a special segregated account ("Special Development Funds") held within the general fund of the City. Such Special Fee will be payable for each building permit issued that requires the purchase of LUEs for water service, or additional LUEs for water service. Notwithstanding anything herein to the contrary, Development Parties shall have the right at any time during the term hereof to pre-pay any or all of the Special Fee(s) required to be paid hereunder and receive credit against (and a release from) the encumbrance herein imposed upon the land in Phase II. In such event, Development Parties may elect the specific lots or parcels for which they desire "releases" in accordance with the provisions of this Addendum. Any such pre-payments shall be deposited in the Special Development Funds. The City may add a number or additional designation to the Special Development Funds account in order to distinguish such account from any similar funds or accounts held by the City.

Section 4. The City will use and occupy the Public Parcels conveyed to the City by the Development Parties (excluding the School Tract) for public purposes only and shall not use the Public Parcels for any use or purpose set forth in the attached Exhibit "C". The City will collect, deposit, account for and expend the Special Development Funds collected by the City pursuant to Section 3 above as follows:

(a) the Public Parcels conveyed to the City pursuant to subsection 2 (a)(i) above will be used and occupied by the City only for city facilities open to the general public, or used by the City to provide public safety services to the citizens of the City;

(b) the funds and monies collected by the City pursuant to Section 3 above, will be deposited by the City in a special segregated account to be used and expended by the City only to construct, erect or install City buildings and facilities on the Public Parcels within Phase II, except as specifically provided in (i) below ;

(c) the City will separately account for the Special Fees/Special Development Funds, and all interest earned on such monies will accrue to such account;

(d) the use and expenditure of the funds and monies that accrue in such Special Development Funds shall be restricted and subject to the terms of this Section 4;

(e) the governing body of the City shall, in its discretion, determine the buildings and facilities to be constructed on such Public Parcels, e.g. fire station, police substation, recreational facility, etc., and the time when any such building or facility is to be

constructed, provided that in no event shall a building or facility listed in Exhibit "C" be placed thereon;

(f) the governing body of the City shall not be required to construct any building or facility on the Public Parcels until such time as sufficient funds have accrued in the Special Development Funds to fund the design and construction cost in its entirety and, if the Public Parcel has been conveyed to the City, the City shall construct and build the selected building/facility within five (5) years after such funds are available therefore; provided, however, the governing body may in its discretion construct any such building or facility thereon at anytime after receiving the deed and within the five (5) years; and provided further that when funds have been accumulated in the Special Development Funds sufficient to fund a building or public recreational facility selected by the governing body, based on plans approved by the governing body, to be constructed on a tract or parcel selected by the governing body and having the next priority for construction scheduled by the governing body, the funds shall be required to be expended for such building or facility located in Phase II;

(g) subject only to the contractual restrictions and obligations provided in this Section 4, the governing body shall have full control and discretion over such Special Development Funds, including, but not limited to, the authority to use or pledge the account and projected revenues under Section 3 to fund notes, warrants, certificates of obligations or bonds to finance a building or facility to be located and constructed within Phase II;

(h) any improvement, structure, building or facility located, erected, installed or constructed in any manner on the Public Parcels shall have an architectural design and be constructed of and use materials and colors that are harmonious, compatible and in keeping with the overall design and materials of other buildings within Plum Creek PUD;

(i) notwithstanding any provision in this Section 4 to the contrary, the monies in the Special Development Funds may be expended by the City to provide landscaping for any of the Public Parcels, and, in the event City buildings or facilities are hereafter constructed on each of Public Parcels, the governing body may use the remaining monies in the account and any additional fees collected pursuant to Section 3 to fund any public purpose or facility; and

(j) the Development Parties shall have the authority to enforce the restrictions and uses of such Special Development Funds by any means available at law or in equity, including mandamus, and such authority shall specifically include enforcement of the restriction that all the Section 3 fees shall be deposited into such account, and maintained and accounted for, and not be used for any purpose whatsoever except as authorized in this Addendum Number Two.

Section 5. This Addendum Number Two is applicable only to Phase II of the Plum Creek Ranch Property as defined in the Agreement and Addendum Number One to the Agreement,

consisting of the land described in Exhibits "A" and "B" attached hereto and incorporated herein for all purposes. A default under, or breach of, this Addendum Number Two shall also be and constitute a breach and default under the Agreement and Addendum Number One to the Agreement.

Section 6. The Development Parties further specifically contract, covenant and agree as follows:

(a) should any provision of Section 2 or Section 3 above, be declared to be unenforceable for any reason:

(i) if the duty to convey any tract or parcel of the Land referenced in Section 2 is found to be unenforceable, then, in that event, the Development Parties will deed and convey to the City a parcel or tract out of the Land that is of equal or greater acreage, then owned by the Development Parties and that is acceptable to the City; and

(ii) if the fee and charge provided for in Section 3 is found to be unenforceable, then, in that event, the Development Parties, their grantees, successors and assigns, agree the City may impose an equivalent fee by ordinance, including, but not limited to, any fee or special assessment against the Land that is authorized by state law.

(b) if the Development Parties challenge the enforceability of the assessment and collection of the Special Fee or the duty and obligation to convey the Public Parcels, or contest or litigate the same, such shall constitute an event of default and the City may, in its sole discretion, suspend or terminate the Agreement, Addendum Number One and this Addendum Number Two.

(c) Save and except for the City exercising its option under (b) above, if any term or provision of this Addendum Number Two or the application of it to any person/entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Addendum Number Two or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Addendum Number Two shall be enforced to the extent permitted by law; provided that if the provisions for the conveyance of the Public Parcels or the Special Fee are invalidated, or held partially or wholly unenforceable, the Development Parties shall immediately agree to convey parcels of the Land pursuant to (a)(i) above or to the imposition of an alternative fee of equal amount pursuant to (a)(ii) above, and failing such curing action by the Development Parties, the Agreement, Addendum Number One and this Addendum Number Two shall at the City's option be and become null and void.

Section 7. The term of this Addendum Number Two will commence on the Effective Date and continue for thirty (30) years thereafter, unless sooner terminated as provided below;

provided that the term of this Addendum Number Two shall be automatically extended for subsequent five (5) year periods until such time as the build-out of Phase II has been completed and building permits have been issued for all the lots, tracts and parcels of Phase II. The City may give notice of any such extension by filing a notice of extension in the official public records of Hays County, Texas. In any event, the term of this Addendum Number Two shall survive and extend beyond the Term and expiration of the Agreement and Addendum Number One. Notwithstanding the above, this Addendum Number Two shall terminate and expire earlier upon the complete build-out of Phase II and the issuance of building permits for all buildings and development planned to be constructed within Phase II according to the concept plan, PUD plan, or other City approved plats and plans for Plum Creek. The term of this Addendum Number Two shall not terminate and expire unless and until the City issues and record in the official public records of Hays County, Texas, a notice of termination and release of this Addendum Number Two as provided herein.

Section 8. The City agrees that it will within three (3) business days of (a) its receipt of the Special Fee required hereunder and (b) the issuance of the applicable building permit, promptly execute and deliver partial releases of the encumbrance herein placed upon the lot or tract within Phase II (for which the Special Fee is paid) for recording in the deed records of Hays County, Texas. Additionally, as and when appropriate, when the Public Parcels are conveyed to the City the City will likewise execute and deliver the necessary releases for proper recording. The partial releases issued when building permits are obtained shall be applicable only to the tract for which the Special Fee has been paid and building permit issued. The fee provided for in Section 3 shall be due and payable for each building permit issued, and subsequent applications for additional building permits for the same lot, tract or parcel of the Land will require additional fees to be paid if City ordinance requires the purchase of additional LUEs for the building or proposed use.

Section 9. Each of the Parties represent and agree that they have closely read and reviewed the Agreement and this Addendum, and that all the terms, provisions and conditions of such Agreement and this Addendum are binding and enforceable in accordance with the terms, provisions and conditions thereof.

Section 10. This Addendum Number Two (and the prior Agreement and Addendum Number One), the Notice of Fees and Encumbrances and Release, Compromise and Settlement Agreement (all executed contemporaneously herewith) contain the entire agreement between the parties hereto and supersede all prior agreements, oral or written, with respect to the subject matter herewith. The provisions of these instruments shall be construed as a whole and not strictly for or against any party.

Section 11. This Addendum Number Two and the covenants, provisions, restrictions, and terms contained herein and created hereby shall inure to the benefit of and be binding upon the Development Parties, their grantees, successors and assigns, and upon any person or entity acquiring a lot, tract or parcel of Phase II or any portion thereof, or any interest

therein, whether by operation of law or otherwise, during the term of this Addendum Number Two. Notwithstanding the foregoing, if any of the Development Parties sells or transfers all or any portion of its interest in any lot, tract or parcel of Phase II to an unaffiliated party, such Development Party shall, upon the sale or conveyance of title, be released and discharged from all of its obligations in connection with the property sold or conveyed by it; provided that, by the terms of the conveyance instrument, the grantee assumes the obligations specified in Section 3 above regarding the Special Fee(s), and, if the conveyance includes a tract designated under Section 2(b)(i) as a potential Public Parcel site, the obligation to convey the designated site to the City as a Public Parcel.

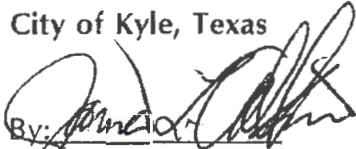
Section 12. (a) The City will use its best, reasonable efforts in cooperation with State agencies to obtain the construction of FM 1626 on or before September 7, 2014.

(b) To the fullest extent permitted by law, the City agrees that so long as there is no event or circumstance that will upon the giving of notice or passage of time, or both, constitute a breach in the performance of any obligation or observance of any covenant or provision by the Development Parties under this Addendum Number Two, there will not be nor will the City impose any special assessments, charges, costs, fees or similar items upon the Development Parties or Phase II (other than those expressly set out in this instrument or customary and ordinary charges and fees imposed from time to time by the City upon all property owners seeking or securing development or building permits or approvals within the City's jurisdiction) in connection with the construction of FM 1626 and/or cost of construction thereof, or the issuance or granting of building or other required development approvals and permits.

Section 13. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement, and the non-defaulting party may pursue the remedies allowed under this Agreement; provided that if the party in default is making good faith and continuing effort to cure the default, the default cannot reasonably be cured within the thirty days, and the default is not for failure to pay a Special Fee, a reasonable extension for time to cure such default(s) shall be granted not to exceed and additional thirty (30) days.

EXECUTED in multiple originals and effective as of the 17th day of September 2004.

City of Kyle, Texas

By: 
Name: James Adkins
Title: Mayor

Mountain Plum, Ltd.
A Texas limited partnership

By: ~~MP General, LLC,~~
A Texas limited liability company, general partner

By: LNG
Name: Richard B. Negley
Title: ~~Manager~~

By: Laura N. Gill
Name: Laura N. Gill
Title: Manager

Plum Creek Development Partners, Ltd.
a Texas limited partnership

By: BGI Plum Creek Developers, Ltd.,
a Texas limited partnership, general partner

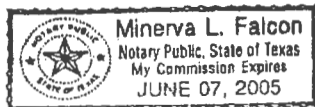
By: ~~Benchmark Land Development, Inc.,~~
a Texas corporation, general partner

By: [Signature]
Name: David C. Mahin
Title: Vice President

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 17th day of September, 2004,
by James Adkins, Mayor of the City of Kyle, a Texas home-rule municipal corporation, on
behalf of the city.



[Signature]
Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF _____ §

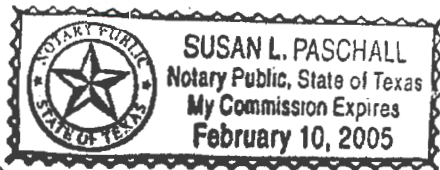
This instrument was acknowledged before me on the _____ day of LNC, 2004, by Richard B. Negley, Manager, acting on behalf of MP General, LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.

Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Brewer §

This instrument was acknowledged before me on the 4th day of September, 2004, by Laura N. Gill, Manager, acting on behalf of MP General LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.

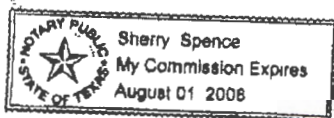


Susan L. Paschall
Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Travis §

This instrument was acknowledged before me on the 13 day of September, 2004, by David C. Mahn, Vice President of Benchmark Land Development, Inc., general partner of BGI Plum Creek Developers, Ltd., the general partner of Plum Creek Development Partners, Ltd. acting on behalf of Plum Creek Development Partners, Ltd.



Sherry Spence
Notary Public-State of Texas

EXHIBIT "A"

DESCRIPTION OF 533.797 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, AND THE JOHN COOPER SURVEY, A-100, AND THE JESSE DAY SURVEY, A-152, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

PART OF 51.3 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 25.9 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 51.2 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 28 ACRES RECORDED IN VOLUME 125, PAGE 69
PART OF 11 ACRES RECORDED IN VOLUME 127, PAGE 139
PART OF 38.7 ACRES RECORDED IN VOLUME 127 PAGE 139
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 136 ACRES RECORDED IN VOLUME 130, PAGE 477
PART OF 849.267 ACRES RECORDED IN VOLUME 322, PAGE 584
ALL OF 51.1 ACRES RECORDED IN VOLUME 123, PAGE 545
ALL OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEGLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 533.797 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS :

COMMENCING at the most southwesterly corner, being the intersection of the south right-of-way of County Road (CR) 171 and the east right-of-way of Farm to Market Road (FM) 2770 in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the east right-of-way of FM 2770 the following six (6) courses and distances:

1. North 00°51'52" East a distance of 175.86 feet for an angle point,
2. With a curve to the right having a radius of 1839.94 feet, a chord bearing North 13°22'05" East a distance of 151.25 feet and an arc length of 151.30 feet for an angle point,
3. North 15°43'26" East a distance of 616.61 feet for an angle point,
4. With a curve to the left having a radius of 2970.31 feet, a chord bearing North 12°48'20" East, a distance of 302.45 feet and an arc length of 302.58 feet for an angle point,

5. North $09^{\circ}53'14''$ East a distance of 1255.37 feet for an angle point,
6. With a curve to the right having a radius of 5659.84 feet, a chord bearing North $11^{\circ}13'38''$ East, a distance of 264.71 feet and an arc length of 264.74 feet for an angle point,

THENCE, leaving the east right-of-way of FM 2770 and crossing the said 28 acre tract, the 331 acre tract, the 38.7 acre tract, the 25.9 acre tract, the 11 acre tract, the 201.14 acre tract, the 51.3 acre tract, and the 51.2 acre tract the following 18 courses and distances:

1. South $77^{\circ}26'16''$ East a distance of 400.00 feet for an angle point,
2. North $12^{\circ}34'03''$ East a distance of 553.43 feet for an angle point,
3. With a curve to the right having a radius of 2394.92 feet, a chord bearing North $15^{\circ}57'48''$ East, a distance of 283.73 feet and an arc length of 283.90 feet for an angle point,
4. North $19^{\circ}21'33''$ East a distance of 79.52 feet for an angle point,
5. North $07^{\circ}51'29''$ East a distance of 102.00 feet for an angle point,
6. North $19^{\circ}21'50''$ East a distance of 1451.67 feet for an angle point,
7. With a curve to the left having a radius of 32,861.24 feet, a chord bearing North $17^{\circ}36'59''$ East distance of 455.63 feet and an arc length of 455.63 feet for an angle point,
8. North $88^{\circ}11'33''$ East a distance of 1618.79 feet for an angle point,
9. North $01^{\circ}48'32''$ West a distance of 923.80 feet for an angle point,
10. North $88^{\circ}09'27''$ East a distance of 1016.41 feet for an angle point,
11. With a curve to the left having a radius of 2964.79 feet, a chord bearing South $12^{\circ}12'03''$ East a distance of 962.99 feet and an arc length of 967.28 feet for an angle point,
12. South $21^{\circ}32'51''$ East a distance of 1391.42 feet for an angle point,
13. With a curve to the right having a radius of 2764.79 feet, a chord bearing South $08^{\circ}55'11''$ East a distance of 1208.85 feet and an arc length of 1218.69 feet for an

angle point,

14. South 03°42'29" West a distance of 1925.38 feet for an angle point,
15. With a curve to the left having a radius of 2964.79 feet, a chord bearing South 00°01'17" West a distance of 381.27 feet and an arc length of 381.54 feet for an angle point,
16. South 03°39'55" East a distance of 347.37 feet for an angle point,
17. South 42°38'22" West a distance of 69.15 feet for an angle point,
18. South 03°39'57" East a distance of 54.62 feet for an angle point being a point on the south right-of-way of CR 171;

THENCE, South 88°50'57" West with the south right-of-way line of CR 171 a distance of 523.45 feet for an angle point,

THENCE, leaving said south right-of-way of CR 171 and crossing the said 331 acre tract North 01°06'50" West a distance of 746.98 feet for an angle point being the northeast corner of the 10.00 acre Hays Consolidated Independent School District (HCISD) Performing Arts Center tract;

THENCE, with the North line of the 10.00 acre HCISD tract the following eight (8) courses and distances:

1. South 88°50'25" West a distance of 465.45 feet for an angle point,
2. South 00°32'48" East a distance of 107.58 feet for an angle point,
3. South 88°53'16" West a distance of 89.05 feet for an angle point,
4. South 01°06'44" East a distance of 48.00 feet for an angle point,
5. South 88°53'16" West a distance of 187.46 feet for an angle point,
6. South 01°06'44" East a distance of 304.50 feet for an angle point,
7. North 88°53'16" East a distance of 167.83 feet for an angle point,
8. South 01°05'37" East a distance of 286.91 feet for an angle point being on the south right-of-way line of CR 171;

THENCE, South 88°50'57" West with the south right-of-way line of CR 171 a distance of 572.03 feet for an angle point,

THENCE leaving the south right-of-way of CR 171 North 01°33'58" West a distance of 332.87 feet for an angle point being the northeast corner of the 1.077 acres City of Kyle No. 4 Well Site,

THENCE with the north line of the said 1.077 acres well site, the following two (2) courses and distances;

1. South 88°24'16" West a distance of 170.00 feet for an angle point,
2. South 01°44'20" East a distance of 332.87 feet for an angle point being a point on the south right-of-way of CR 171;

THENCE, with the south right-of-way line of CR 171, the following three (3) courses and distances:

1. South 87°32'59" West a distance of 1272.17 feet for an angle point,
2. South 87°04'02" West a distance of 762.64 feet for an angle point,
3. South 87°01'00" West a distance of 237.10 feet for an angle point,

THENCE, leaving the south right-of-way of CR 171 and crossing the said 136 acre tract the following three (3) courses and distances:

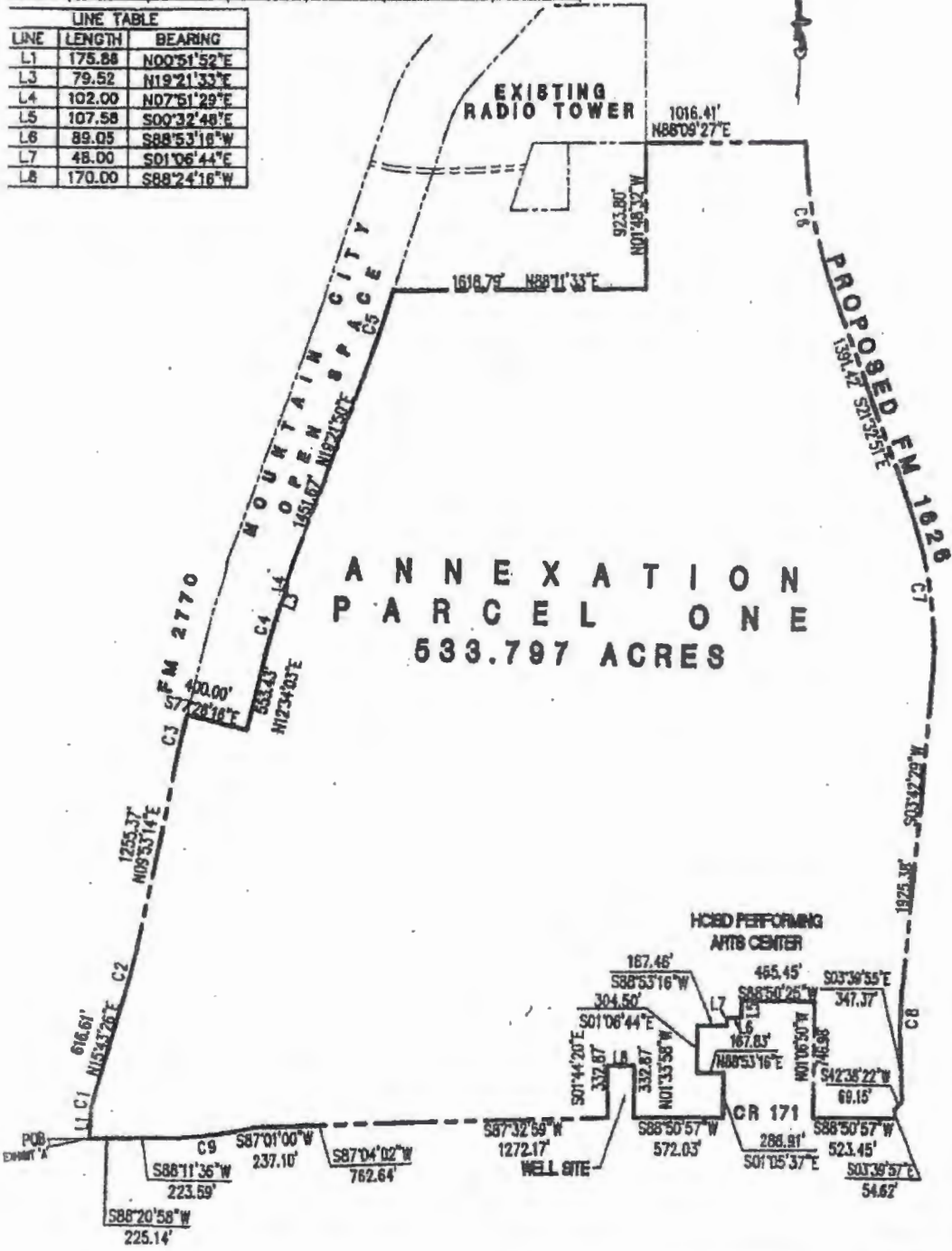
1. With a curve to the right having a radius of 2704.24 feet, a chord bearing South 82°23'43" West a distance of 596.07 feet and an arc length of 597.28 feet for an angle point,
2. South 88°11'36" West a distance of 223.59 feet for an angle point,
3. South 88°20'58" West a distance of 225.14 feet to the **POINT OF BEGINNING** and containing 533.797 acres more or less.

CURVE TABLE

CURVE	DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
C1	4°42'41"	151.30'	75.89'	1839.94'	N13°22'05"E	151.25'
C2	5°50'12"	302.56'	151.42'	2870.31'	N12°48'20"E	302.45'
C3	2°40'48"	264.74'	132.39'	5689.84'	N11°13'38"E	264.71'
C4	6°47'31"	263.90'	142.12'	2394.92'	N15°57'48"E	263.73'
C5	0°47'40"	455.63'	227.82'	32881.24'	N17°38'59"E	455.63'
C6	18°41'35"	867.28'	487.97'	2864.79'	S12°12'03"E	862.99'
C7	25°15'19"	1218.69'	619.41'	2764.79'	S08°55'11"E	1208.85'
C8	7°22'24"	381.54'	191.03'	2964.79'	S00°01'17"W	381.27'
C9	12°39'17"	597.28'	299.66'	2704.24'	S82°23'43"W	596.07'

SCALE: 1" = 800'

LINE	LENGTH	BEARING
L1	175.88	N00°51'52"E
L3	79.52	N19°21'33"E
L4	102.00	N07°51'29"E
L5	107.58	S00°32'48"E
L6	89.05	S88°53'16"W
L7	48.00	S01°06'44"E
L8	170.00	S88°24'16"W



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYLE, TEXAS



HOWARD ENGINEERS, INC.
4305 Russell Drive
Austin, Texas 78704
Phone: 512-448-0881
Fax: 512-448-0989
Email: howrdsgn@swbell.net

EXHIBIT "B"

DESCRIPTION OF 318.184 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

PART OF 100 ACRES RECORDED IN VOLUME 116, PAGE 209
PART OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 208
ALL OF 51.1 ACRES RECORDED IN VOLUME 119 PAGE 517
ALL OF 211 ACRES RECORDED IN VOLUME 116, PAGE 209

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEGLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 318.184 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at the most southeasterly corner, being the intersection of the south right-of-way of County Road 171 and the west right-of-way of the Union Pacific Railroad in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the south right-of-way of CR 171 the following two (2) courses and distances:

1. South 89°05'48" West a distance of 1344.53 feet to an angle point,
2. South 88°50'57" West a distance of 282.31 feet to an angle point,

THENCE, leaving the south right-of-way line of CR 171 and crossing the said 100 acre tract the following 11 courses and distances:

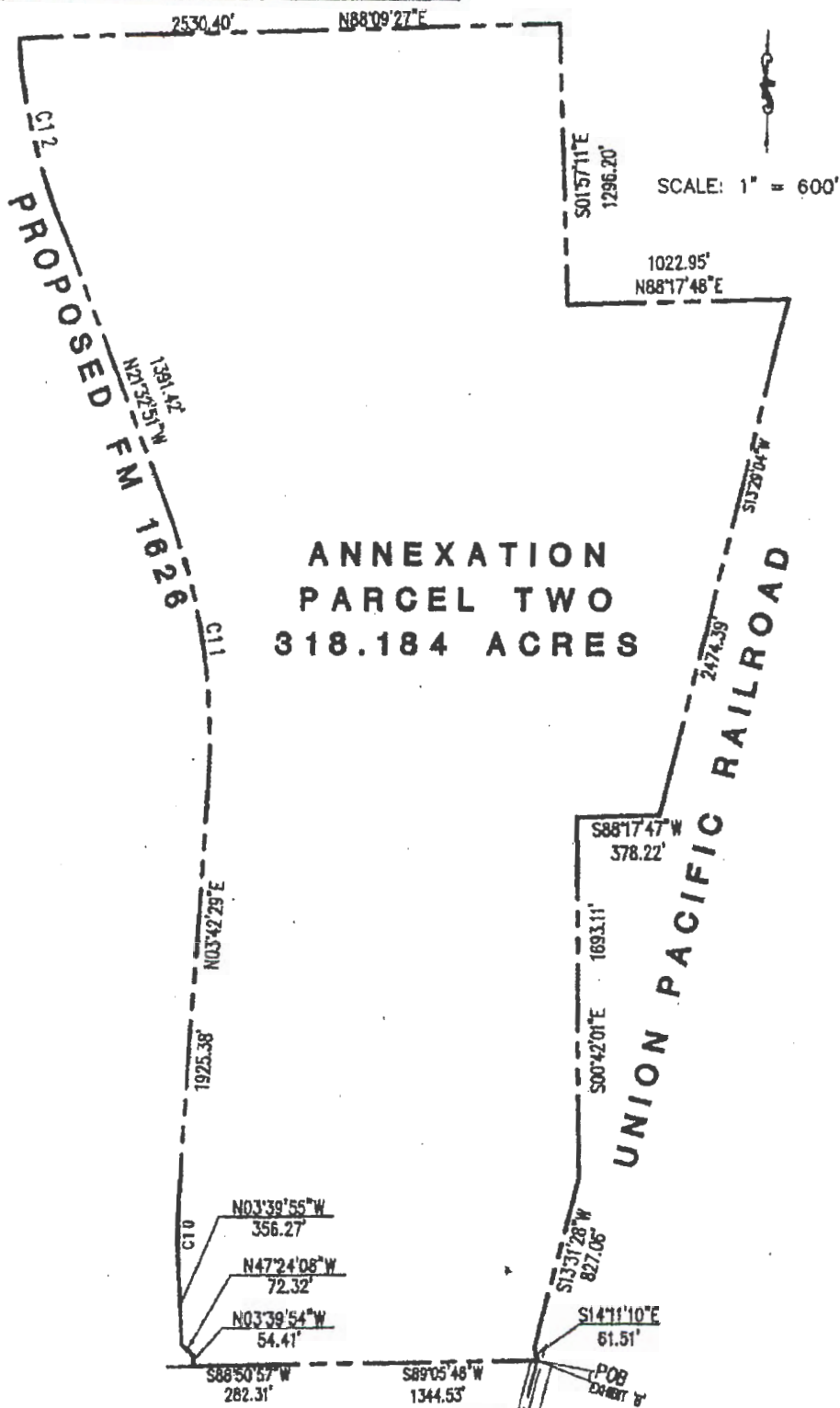
1. North 03°39'54" West a distance of 54.41 feet to an angle point,
2. North 47°24'08" West a distance of 72.32 feet to an angle point,
3. North 03°39'55" West a distance of 356.27 feet to an angle point,
4. With a curve to the right having a radius of 2764.79 feet, a chord bearing North 00°01'17" East, a distance of 355.55 feet and an arc length of 355.80 feet to an angle point,
5. North 03°42'29" East a distance of 1925.38 feet to an angle point,

6. With a curve to the left having a radius of 2964.79 feet, a chord bearing North 08°55'11" West, a distance of 1296.30 feet and an arc length of 1306.85 feet to an angle point,
7. North 21°32'51" West a distance of 1391.42 feet to an angle point,
8. With a curve to the right having a radius of 2764.79 feet, a chord bearing North 12°14'15" West, a distance of 894.54 feet and an arc length of 898.49 feet to an angle point for the northwesterly corner of the tract described herein,
9. North 88°09'27" East a distance of 2530.40 feet to an angle point,
10. South 01°57'11" East a distance of 1296.20 feet to an angle point,
11. North 88°17'48" East a distance of 1022.95 feet to an angle point being on the west right-of-way of the Union Pacific Railroad;

THENCE, with the right-of-way of the Union Pacific Railroad the following five (5) courses and distances:

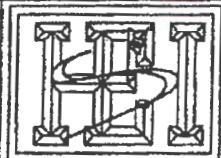
1. South 13°29'04" West a distance of 2474.39 feet to an angle point,
2. South 88°17'47" West a distance of 378.22 feet to an angle point,
3. South 00°42'01" East a distance of 1693.11 feet to an angle point,
4. South 13°31'28" West a distance of 827.06 feet to an angle point,
5. South 14°11'10" East a distance of 61.51 feet to the **POINT OF BEGINNING** and containing 318.184 acres more or less.

CURVE TABLE						
CURVE	DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
C10	7°22'24"	355.80'	178.15'	2764.79'	N00°01'17"E	355.55'
C11	25°15'19"	1306.85'	664.21'	2984.79'	N08°55'11"W	1298.30'
C12	18°37'11"	898.49'	453.24'	2764.79'	N12°14'15"W	894.54'



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYLE, TEXAS



HOWARD ENGINEERS, INC.
 4309 Russell Drive
 Austin, Texas 78704
 Phone: 512-448-0881
 Fax: 512-448-0989
 Email: howrdsgn@swbell.net

EXHIBIT "C"

USES PROHIBITED ON THE PUBLIC PARCELS

The Development Parties hereby limit and restrict the use of the Public Parcels, and may, in their discretion, prohibit the following uses by deed restrictions in the instruments conveying the Public Parcels to the City.

Municipal landfill or other garbage collection facility
Jail or other incarceration facility
Drug or alcohol treatment or prevention facility
Halfway house or other similar remediation facility
Mental health or similar treatment facilities
Sewage treatment facilities
Park and Ride facility
Municipal parking facility
Municipal vehicle storage or repair facility, including "bus barn"

NOTICE OF FEES AND ENCUMBRANCES

STATE OF TEXAS §

COUNTY OF HAYS §

Whereas, the City of Kyle, Texas (the "City") and Plum Creek Development Partners, Ltd. ("Plum Creek") executed and delivered a Release, Compromise and Settlement Agreement, dated September 7, 2004, providing for Plum Creek and Mountain Plum, Ltd. ("Mountain Plum") (sometimes jointly referenced hereinafter as the "Development Parties") to execute and deliver Addendum Number Two to the Agreement Between the City of Kyle, Plum Creek Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property ("Addendum Number Two");

Whereas, the Development Parties had previously executed Addendum Number One to the Agreement Between the City of Kyle, Plum Creek Partners, Ltd., Mountain Plum, as successor to William Negley, and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property, whereby, in part, the Development Parties exercised their option to extend the Agreement Between the City of Kyle, Plum Creek Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property, to the land described in Exhibits "A" and "B" attached hereto and incorporated herein for all purposes ("Phase II");

Whereas, Addendum Number Two provides for a special assessment to be established against Phase II and for the Development Parties, their grantees, successors and assigns to pay additional fees and charges to the City to partially fund costs to be paid by the Development Parties pursuant to the Release, Compromise and Settlement Agreement and Addendum Number Two; and

Whereas, Addendum Number Two obligates the Development Parties, their grantees, successors and assigns as provided therein;

NOW, THEREFORE, the undersigned Development Parties execute this Notice of Fees and Encumbrances and file the same of record in the Deed Records of Hays County, Texas, for the purpose of providing public notice to all persons that:

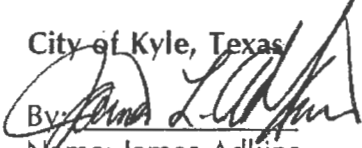
(1) Phase II is subject to the terms and conditions of Addendum Number Two, and the various fees and encumbrances provided therein, including, but not limited to, the requirement that, in addition to any and all other typical City taxes, fees and charges that may be or become due and payable to the City, the Development Parties and their grantees, successors and assigns shall pay a special fee and charge to the City for each individual lot, tract or parcel of Phase II at the time a building permit is applied for such lot, tract or parcel of Phase II. The charge shall be an amount equal to \$500.00 multiplied by the number of living unit equivalents ("LUEs") required by City Ordinance #298-1, as amended, (or any successor ordinance) for water service to the property being issued a building permit. Such

fee will be payable for each building permit issued that requires the purchase of LUEs for water service, or additional LUEs for water service that may be required when another building permit is obtained for the property, or when the use of a previously permitted building changes in a manner to require additional water service..

(2) This Notice of Fees and Encumbrances is executed, delivered and recorded for the purpose of giving public notice regarding Addendum Number Two to the Agreement Between the City of Kyle, Plum Creek Development Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase 1 of the Plum Creek Ranch Property, dated as of September 7, 2004. Please be aware that Addendum Number Two has other substantive terms and provisions and is available for public inspection at the City Hall of the City of Kyle, Hays County, Texas.

Executed this the 7th day of September 2004.


City of Kyle, Texas

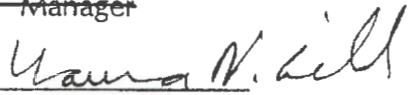
By: 
Name: James Adkins
Title: Mayor

Mountain Plum, Ltd.

A Texas limited partnership

By: ~~MP General, LLC,~~
A Texas limited liability company, general partner

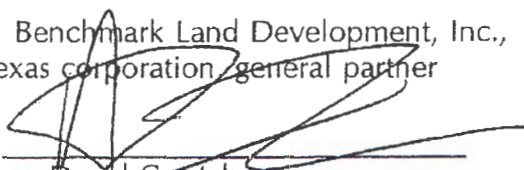
By: 
Name: Richard B. Negley
Title: ~~Manager~~

By: 
Name: Laura N. Gill
Title: Manager

Plum Creek Development Partners, Ltd.
a Texas limited partnership

By: BGI Plum Creek Developers, Ltd.,
a Texas limited partnership, general partner

By: ~~Benchmark Land Development, Inc.,
a Texas corporation, general partner~~

By: 
Name: ~~David C. Mahn~~
Title: Vice President

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 17th day of September, 2004, by James Adkins, Mayor of the City of Kyle, a Texas home-rule municipal corporation, on behalf of the city.




Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of LNF, 2004, by Richard B. Negley, Manager, acting on behalf of ~~MP General, LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.~~

Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Bexar §

This instrument was acknowledged before me on the 14th day of September, 2004, by Laura N. Gill, Manager, acting on behalf of MP General LLC, a limited liability company, as the general partner of Mountain Plum, Ltd.

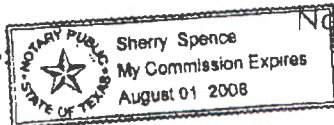


Susan L. Paschall
Notary Public-State of Texas

STATE OF TEXAS §

COUNTY OF Traws §

This instrument was acknowledged before me on the 13 day of September, 2004, by David C. Mahn, Vice President of Benchmark Land Development, Inc., general partner of BGI Plum Creek Developers, Ltd., the general partner of Plum Creek Development Partners, Ltd. acting on behalf of Plum Creek Development Partners, Ltd.



Sherry Spence
Notary Public-State of Texas

After recording, Return To:
City of Kyle, Texas
300 W. Center Street
P. O. Box 40
Kyle, Texas 78640
Attention: City Secretary

EXHIBIT "A"

DESCRIPTION OF 533.797 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, AND THE JOHN COOPER SURVEY, A-100, AND THE JESSE DAY SURVEY, A-152, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

PART OF 51.3 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 25.9 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 51.2 ACRES RECORDED IN VOLUME 124, PAGE 447
PART OF 28 ACRES RECORDED IN VOLUME 125, PAGE 69
PART OF 11 ACRES RECORDED IN VOLUME 127, PAGE 139
PART OF 38.7 ACRES RECORDED IN VOLUME 127 PAGE 139
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 136 ACRES RECORDED IN VOLUME 130, PAGE 477
PART OF 849.267 ACRES RECORDED IN VOLUME 322, PAGE 584
ALL OF 51.1 ACRES RECORDED IN VOLUME 123, PAGE 545
ALL OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEGLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 533.797 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS :

COMMENCING at the most southwesterly corner, being the intersection of the south right-of-way of County Road (CR) 171 and the east right-of-way of Farm to Market Road (FM) 2770 in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the east right-of-way of FM 2770 the following six (6) courses and distances:

1. North 00°51'52" East a distance of 175.86 feet for an angle point,
2. With a curve to the right having a radius of 1839.94 feet, a chord bearing North 13°22'05" East a distance of 151.25 feet and an arc length of 151.30 feet for an angle point,
3. North 15°43'26" East a distance of 616.61 feet for an angle point,
4. With a curve to the left having a radius of 2970.31 feet, a chord bearing North 12°48'20" East, a distance of 302.45 feet and an arc length of 302.58 feet for an angle point,

5. North $09^{\circ}53'14''$ East a distance of 1255.37 feet for an angle point,
6. With a curve to the right having a radius of 5659.84 feet, a chord bearing North $11^{\circ}13'38''$ East, a distance of 264.71 feet and an arc length of 264.74 feet for an angle point,

THENCE, leaving the east right-of-way of FM 2770 and crossing the said 28 acre tract, the 331 acre tract, the 38.7 acre tract, the 25.9 acre tract, the 11 acre tract, the 201.14 acre tract, the 51.3 acre tract, and the 51.2 acre tract the following 18 courses and distances:

1. South $77^{\circ}26'16''$ East a distance of 400.00 feet for an angle point,
2. North $12^{\circ}34'03''$ East a distance of 553.43 feet for an angle point,
3. With a curve to the right having a radius of 2394.92 feet, a chord bearing North $15^{\circ}57'48''$ East, a distance of 283.73 feet and an arc length of 283.90 feet for an angle point,
4. North $19^{\circ}21'33''$ East a distance of 79.52 feet for an angle point,
5. North $07^{\circ}51'29''$ East a distance of 102.00 feet for an angle point,
6. North $19^{\circ}21'50''$ East a distance of 1451.67 feet for an angle point,
7. With a curve to the left having a radius of 32,861.24 feet, a chord bearing North $17^{\circ}36'59''$ East distance of 455.63 feet and an arc length of 455.63 feet for an angle point,
8. North $88^{\circ}11'33''$ East a distance of 1618.79 feet for an angle point,
9. North $01^{\circ}48'32''$ West a distance of 923.80 feet for an angle point,
10. North $88^{\circ}09'27''$ East a distance of 1016.41 feet for an angle point,
11. With a curve to the left having a radius of 2964.79 feet, a chord bearing South $12^{\circ}12'03''$ East a distance of 962.99 feet and an arc length of 967.28 feet for an angle point,
12. South $21^{\circ}32'51''$ East a distance of 1391.42 feet for an angle point,
13. With a curve to the right having a radius of 2764.79 feet, a chord bearing South $08^{\circ}55'11''$ East a distance of 1208.85 feet and an arc length of 1218.69 feet for an

angle point,

14. South 03°42'29" West a distance of 1925.38 feet for an angle point,
15. With a curve to the left having a radius of 2964.79 feet, a chord bearing South 00°01'17" West a distance of 381.27 feet and an arc length of 381.54 feet for an angle point,
16. South 03°39'55" East a distance of 347.37 feet for an angle point,
17. South 42°38'22" West a distance of 69.15 feet for an angle point,
18. South 03°39'57" East a distance of 54.62 feet for an angle point being a point on the south right-of-way of CR 171;

THENCE, South 88°50'57" West with the south right-of-way line of CR 171 a distance of 523.45 feet for an angle point,

THENCE, leaving said south right-of-way of CR 171 and crossing the said 331 acre tract North 01°06'50" West a distance of 746.98 feet for an angle point being the northeast corner of the 10.00 acre Hays Consolidated Independent School District (HCISD) Performing Arts Center tract;

THENCE, with the North line of the 10.00 acre HCISD tract the following eight (8) courses and distances:

1. South 88°50'25" West a distance of 465.45 feet for an angle point,
2. South 00°32'48" East a distance of 107.58 feet for an angle point,
3. South 88°53'16" West a distance of 89.05 feet for an angle point,
4. South 01°06'44" East a distance of 48.00 feet for an angle point,
5. South 88°53'16" West a distance of 187.46 feet for an angle point,
6. South 01°06'44" East a distance of 304.50 feet for an angle point,
7. North 88°53'16" East a distance of 167.83 feet for an angle point,
8. South 01°05'37" East a distance of 286.91 feet for an angle point being on the south right-of-way line of CR 171;

THENCE, South $88^{\circ}50'57''$ West with the south right-of-way line of CR 171 a distance of 572.03 feet for an angle point,

THENCE leaving the south right-of-way of CR 171 North $01^{\circ}33'58''$ West a distance of 332.87 feet for an angle point being the northeast corner of the 1.077 acres City of Kyle No. 4 Well Site,

THENCE with the north line of the said 1.077 acres well site, the following two (2) courses and distances;

1. South $88^{\circ}24'16''$ West a distance of 170.00 feet for an angle point,
2. South $01^{\circ}44'20''$ East a distance of 332.87 feet for an angle point being a point on the south right-of-way of CR 171;

THENCE, with the south right-of-way line of CR 171, the following three (3) courses and distances:

1. South $87^{\circ}32'59''$ West a distance of 1272.17 feet for an angle point,
2. South $87^{\circ}04'02''$ West a distance of 762.64 feet for an angle point,
3. South $87^{\circ}01'00''$ West a distance of 237.10 feet for an angle point;

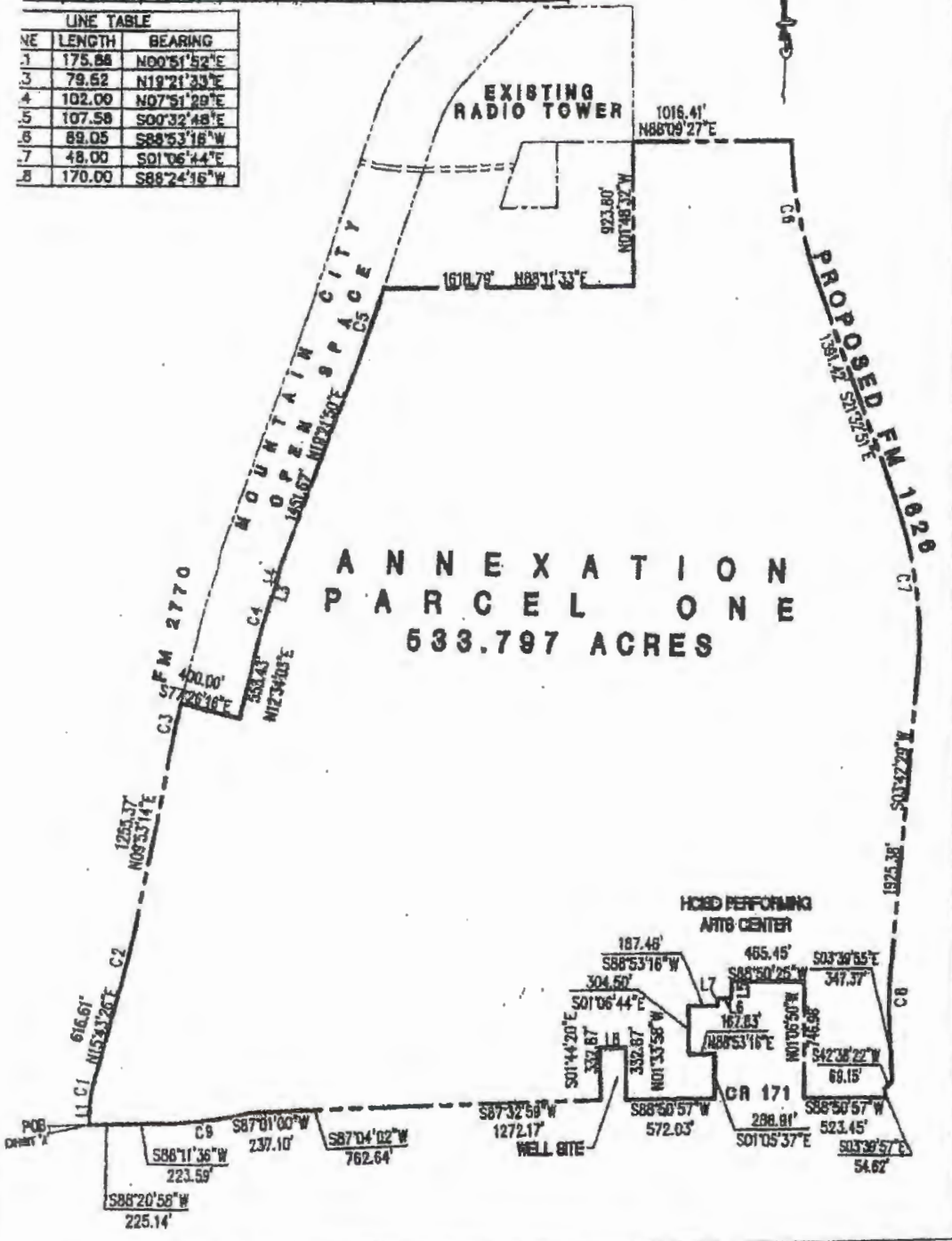
THENCE, leaving the south right-of-way of CR 171 and crossing the said 136 acre tract the following three (3) courses and distances:

1. With a curve to the right having a radius of 2704.24 feet, a chord bearing South $82^{\circ}23'43''$ West a distance of 596.07 feet and an arc length of 597.28 feet for an angle point,
2. South $88^{\circ}11'36''$ West a distance of 223.59 feet for an angle point,
3. South $88^{\circ}20'58''$ West a distance of 225.14 feet to the **POINT OF BEGINNING** and containing 533.797 acres more or less.

CURVE TABLE						
RVE	DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
1	4°42'41"	151.30'	75.66'	1839.94'	N13°22'05"E	151.25'
2	5°50'12"	302.58'	151.42'	2970.31'	N12°48'20"E	302.45'
3	2°40'48"	284.74'	132.38'	5859.54'	N11°13'38"E	284.71'
4	6°47'31"	283.90'	142.12'	2364.82'	N15°57'48"E	283.73'
5	0°47'40"	455.63'	227.82'	32881.24'	N17°38'59"E	455.63'
6	18°41'35"	967.28'	487.97'	2964.79'	S12°12'03"E	962.99'
7	25°15'19"	1218.69'	619.41'	2764.79'	S38°55'11"E	1209.85'
8	7°22'24"	381.64'	191.03'	2984.99'	S66°01'17"W	381.27'
9	12°39'17"	597.28'	299.68'	2764.24'	S82°23'43"W	596.07'

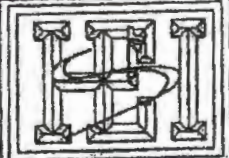
LINE TABLE		
LINE	LENGTH	BEARING
1	175.88	N00°51'52"E
2	79.62	N19°21'33"E
3	102.00	N07°51'29"E
4	107.58	S00°32'48"E
5	89.05	S89°53'16"W
6	48.00	S01°06'44"E
7	170.00	S88°24'16"W

SCALE: 1" = 800'



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYL, TEXAS



HOWARD ENGINEERS, INC.
4363 Russell Drive
Austin, Texas 78704
Phone: 512-448-0881
Fax: 512-448-0989
Email: howrdsn@awbell.net

EXHIBIT "B"

DESCRIPTION OF 318.184 ACRES OF LAND IN THE M.M. McCARVER LEAGUE, SURVEY NO. 4, A-10, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN DEEDS TO LAURA BURLESON NEGLEY OF RECORD AS FOLLOWS:

PART OF 100 ACRES RECORDED IN VOLUME 116, PAGE 209
PART OF 51.2 ACRES RECORDED IN VOLUME 117, PAGE 288
PART OF 201.14 ACRES RECORDED IN VOLUME 185, PAGE 402
PART OF 331 ACRES RECORDED IN VOLUME 117, PAGE 208
ALL OF 51.1 ACRES RECORDED IN VOLUME 119 PAGE 517
ALL OF 211 ACRES RECORDED IN VOLUME 116, PAGE 209

ALL OF RECORD IN HAYS COUNTY DEED RECORDS; ALL CONVEYED TO WILLIAM NEGLEY IN PROBATE WILL VOLUME 4583, PAGE 634 TRAVIS COUNTY DEED RECORDS; SAID 318.184 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at the most southeasterly corner, being the intersection of the south right-of-way of County Road 171 and the west right-of-way of the Union Pacific Railroad in Hays County, Texas and being the **POINT OF BEGINNING** of the tract described herein;

THENCE, with the south right-of-way of CR 171 the following two (2) courses and distances:

1. South 89°05'48" West a distance of 1344.53 feet to an angle point,
2. South 88°50'57" West a distance of 282.31 feet to an angle point,

THENCE, leaving the south right-of-way line of CR 171 and crossing the said 100 acre tract the following 11 courses and distances:

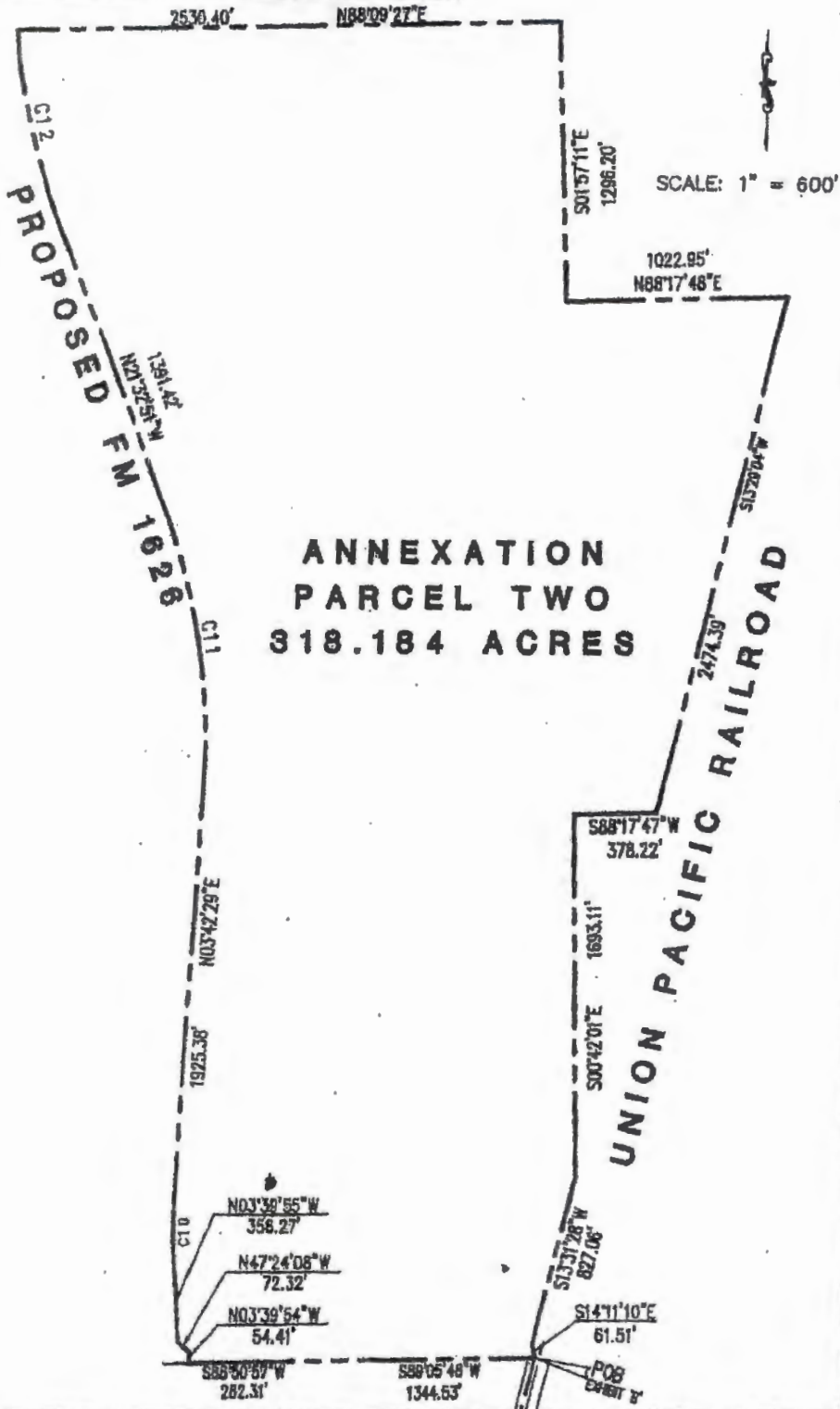
1. North 03°39'54" West a distance of 54.41 feet to an angle point,
2. North 47°24'08" West a distance of 72.32 feet to an angle point,
3. North 03°39'55" West a distance of 356.27 feet to an angle point,
4. With a curve to the right having a radius of 2764.79 feet, a chord bearing North 00°01'17" East, a distance of 355.55 feet and an arc length of 355.80 feet to an angle point,
5. North 03°42'29" East a distance of 1925.38 feet to an angle point,

6. With a curve to the left having a radius of 2964.79 feet, a chord bearing North $08^{\circ}55'11''$ West, a distance of 1296.30 feet and an arc length of 1306.85 feet to an angle point,
7. North $21^{\circ}32'51''$ West a distance of 1391.42 feet to an angle point,
8. With a curve to the right having a radius of 2764.79 feet, a chord bearing North $12^{\circ}14'15''$ West, a distance of 894.54 feet and an arc length of 898.49 feet to an angle point for the northwesterly corner of the tract described herein,
9. North $88^{\circ}09'27''$ East a distance of 2530.40 feet to an angle point,
10. South $01^{\circ}57'11''$ East a distance of 1296.20 feet to an angle point,
11. North $88^{\circ}17'48''$ East a distance of 1022.95 feet to an angle point being on the west right-of-way of the Union Pacific Railroad;

THENCE, with the right-of-way of the Union Pacific Railroad the following five (5) courses and distances:

1. South $13^{\circ}29'04''$ West a distance of 2474.39 feet to an angle point,
2. South $88^{\circ}17'47''$ West a distance of 378.22 feet to an angle point,
3. South $00^{\circ}42'01''$ East a distance of 1693.11 feet to an angle point,
4. South $13^{\circ}31'28''$ West a distance of 827.06 feet to an angle point,
5. South $14^{\circ}11'10''$ East a distance of 61.51 feet to the **POINT OF BEGINNING** and containing 318.184 acres more or less.

CURVE TABLE					
DELTA	LENGTH	TANGENT	RADIUS	CHORD BEARING	CHORD DISTANCE
7°22'24"	355.80'	178.15'	2764.76'	N00°01'17"E	355.55'
28°15'19"	1308.85'	664.21'	2864.78'	N00°25'11"W	1286.30'
18°37'11"	898.49'	453.24'	2764.76'	N12°14'15"W	894.54'



FIELD NOTE EXHIBIT

PLUM CREEK
PHASE 2
KYLE, TEXAS



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