

COUNTY OF HAYS §
 §
STATE OF TEXAS §

**AMENDMENT NUMBER 1 TO THE
DEVELOPMENT AND SETTLEMENT AGREEMENT FOR THE
BUNTON CREEK SUBDIVISION**

This **Amendment Number 1 to the Development and Settlement Agreement for the Bunton Creek Subdivision** ("Amendment") is made by and between the **City of Kyle**, a home-rule municipal corporation (the "City"), and **Qualico KP, LLC** (the "Developer"), as of the effective date as set forth below. The City and the Developer are sometimes referred to herein jointly as the "Parties" and the Development and Settlement Agreement for the Bunton Creek Subdivision is referred to herein as the "Agreement."

Whereas, the City, on the one hand, and 151, Ltd. and RTM/HER #1 Limited, on the other, entered into the Agreement on or about July 29, 2004 and 151, Ltd. and RTM/HER #1 Limited subsequently assigned their rights under the Agreement to C4D-I Ltd., with C4D-I Ltd. subsequently assigning its rights under the Agreement to Qualico KP, LLC.

Whereas, the Parties execute this Amendment to provide for Developer to increase the amount of land Developer will actually convey to the City for use as public parkland, and to reserve the use of parcel P-1b, as hereinafter described, for the use and enjoyment of the members of the Property Owners Association ("POA");

Whereas, the lots referred to in this Amendment are those described in the County Approved Preliminary Plan Bunton Creek Subdivision Phases I and II attached to the Agreement as Exhibit B;

Whereas, all of the terms, provisions and conditions of the Agreement shall remain in full force and effect except as specifically provided otherwise herein, and the terms, provisions and conditions of this Amendment and the Agreement shall be strictly interpreted and construed as amended;

NOW, THEREFORE, the parties hereby contract, covenant and agree as follows:

Section 1. Subsection 4.02(q) of the Agreement is amended in its entirety to read as follows:

(q) to grant the City the public utility, park and recreation, conservation and general public use easement along the west boundary of the Subdivision (over Lots P-2, P-3 and P-4) attached hereto as Exhibit "F";

Section 2. Subsection 4.02(r) of the Agreement is amended in its entirety to read as follows:

(r) to deed to the City the area along Plum Creek for use as parkland, greenbelts and public utility easements, except as specifically provided otherwise;

Section 3. Subsection 4.02(w) of the Agreement is amended in its entirety to read as follows:

(w) the land area in Phase III that is designated as Lot P-1 will be developed, owned and maintained by the POA as two separate parcels, as follows:

(i) Lot P-1 will be platted/re-platted, as two separate lots, with the centerline of the creek as the boundary line between the lots. That part of Lot P-1 situated north of the creek will be designated as Lot P-1(a), and that part or portion of Lot P-1 situated on the south side of the creek will be designated as Lot P-1(b).

(ii) Developer shall grant to the City for the benefit of the general public an easement to use Lot P-1(a) as parkland and for recreational purposes. The easement shall provide full and unrestricted public access.

(iii) Developer shall construct a baseball field and parking lot on Lot P-1(a).

(iv) Lot P-1(b) shall be developed with park and recreational amenities consistent with neighborhood parks as the Developer and the POA find appropriate. Access to Lot P-1(b) shall be limited to the members of the POA and their guests.

Section 4. Subsection 4.02(y) of the Agreement is amended in its entirety to read as follows:

(y) to build a baseball field on Lot P-1(a) that is available to the general public;

Section 5. Section 7.02 of the Agreement is hereby amended in its entirety to read as follows:

7.02. Developer will dedicate the land, greenbelts, parks and open space to the City as provided in the Agreement as amended by this Amendment Number 1. The grants, dedications and conveyances will include: (a) the public access park and recreation easement on Lot P-1(a); (b) the conservation, park, drainage and utility easements on Lots P-2, P-3 and P-4 as provided in Section 4 above; and (c) Lots P-5 and P-6 will be dedicated to the City as public parkland.

Section 6. All actions with respect to the lots referenced in this Amendment and the Agreement shall be applicable to such property as platted from time to time and references to such properties in subsequently executed documents (including but not limited to Exhibit F) shall be modified to correctly reference such properties in accordance with this Amendment as they are then platted.

Executed effective as of the 18 day of September 2008.

City of Kyle

Miguel Gonzalez, Mayor

Qualico KP, LLC, a Texas limited liability company
By: Qualico Developments, U.S., Inc., a Delaware corporation, sole manager

By: 
Vera Massaro, Assistant Secretary


And By: 
Brian Higgins, Assistant Secretary

Exhibit "F"
CONSERVATION, PARK, DRAINAGE AND UTILITY EASEMENT

DATE: 18 day of September, 2008.

GRANTOR: **Qualico KP, LLC**

GRANTOR'S MAILING ADDRESS: % Vera Massaro, 7940 Shoal Creek Blvd., Suite 201,
Austin, Texas 78757

GRANTEE: **City of Kyle, Texas**

GRANTEE'S MAILING ADDRESS (including County): **P.O. Box 40, Kyle, Hays County,
Texas 78640**

LIENHOLDER:

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: Lots P-1(a), P-2, P-3 and P-4 as set forth on the County approved Preliminary Plan Bunton Creek subdivision Phases I and II as approved by Hays County, Texas, being the same property shown on such Plan as follows: (Tract 1) Lots P-2, P-3 and P-4 being the one hundred two foot (102') wide strip of land, more or less, extending along the west side of the Bunton Creek Subdivision (hereinafter the "Common Area"); and (Tract 2) Lot P-1(a) at the northernmost part of the Bunton Creek Subdivision, platted, or re-platted as parkland (the "Park Area").

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development and Settlement Agreement for the Bunton Creek Subdivision dated as of the 29th day of July 2004, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, and conveys to GRANTEE, its successors and assigns:

(1) The following easements and property rights are granted and conveyed to the Grantee for and with respect to Tract 1: (a) a non-exclusive, perpetual easement over, on and across the Common Area for the purpose of requiring the Common Area to be maintained, preserved and protected to conserve the natural processes, natural resources, water quality, habitats, ecosystems by requiring the Common Area be maintained as a natural greenbelt, water quality buffer and drainage area; (ii) a perpetual easement for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing,

relocating, and removing or causing to be placed, constructed, operated, repaired, maintained, rebuilt, replaced, relocated and removed structures or improvements (that are primarily underground) reasonably necessary for the supplying of electricity, natural gas, water, sanitary sewer, drainage and/or telecommunications or other such utility services, drainage and cable television in, under and across the Common Area; and (iii) a non-exclusive easement to install passive recreational facilities, e.g., pathways, trails, walkways and landscaping, and to maintain and replace only such facilities as are installed by Grantee (collectively the "City Easements") for use by the residents of the Bunton Creek Subdivision and the general public.

(2) The Grantee is granted easements and property rights for and with respect to Tract 2, to use and occupy Tract 2 as a public park and recreational facility for the use and benefit of the general public, and the Grantee shall have all of the rights to use Tract 2 as Grantee has with respect to any parkland that is owned in fee by Grantee; provided that the maintenance of Tract 2 and the improvements thereon shall be the duty and obligation of the homeowners association created by the Developers for the Bunton Creek Subdivision.

The easements, rights and privileges hereby granted for Tract 1 are expressly made by GRANTOR and accepted by GRANTEE, subject to the following:

1. Save and except only for the improvements and permitted facilities (if any) installed within the Common Area by the Grantee under authority of the City Easements, the use of the Common Area shall be limited to use as a common area, park and recreational land, greenbelt, drainage easement and conservation area for the exclusive use and benefit of the owners of lots within the Bunton Creek Subdivision ("Lot Owners"), and the general public. Subject to the City Easements, the Common Area may be maintained by the Lot Owners in its natural state, or improved as permitted, provided that no improvements shall be constructed or placed within the Common Area, other than drainage, detention and/or water quality and related facilities, and such passive recreational facilities (such as trails, paths or accessways and related improvements), landscaping and/or underground public utility lines and systems and related improvements, that do not change the direction or flow of drainage channels within the Common Area or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels. Mowing and trimming of grass, weeds and vegetation, and general maintenance of all parts or portions of the Common Area that are not within a passive recreational facility installed by the Grantee shall be the duty and responsibility of the Lot Owners; provided such areas may be permitted by the Lot Owners to remain in a natural state.

2. GRANTOR expressly retains and reserves unto GRANTOR and the Lot Owners, their respective heirs, executors administrators, legal representatives, successors and assigns, (i) the fee ownership of the Common Area, (ii) the right to place, construct, operate, repair, maintain, rebuild, replace, relocate, and remove passive recreational facilities

(such as trails, paths or accessways, and related improvements) and landscaping in, on, or across the Common Area; provided, the same do not limit or interfere with any such facility or improvement installed by Grantee, or change the direction or flow of drainage channels within the Common Area or obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels.

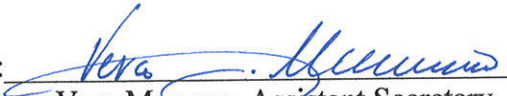
The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the Common Area and the Park, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Common Area as of the date this Conservation, Park, Drainage and Utility Easement becomes effective as to portions of the Common Area as provided herein and not inconsistent with the Development Agreement dated as of the 29th day of July 2004.

TO HAVE AND TO HOLD the above-described easements and rights, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE'S successors and assigns forever; and GRANTOR does hereby bind themselves, their heirs, executors, administrators, grantees, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easements unto GRANTEE, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

Qualico KP, LLC, a Texas limited liability company
By: Qualico Developments, U.S., Inc., a Delaware corporation, sole manager

By: 
Vera Massaro, Assistant Secretary

And By: 
Brian Higgins, Assistant Secretary

Accepted and Approved:

City of Kyle, Texas

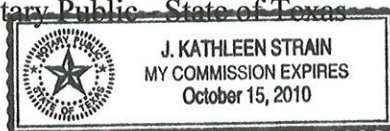
Amendment Number 1
Bunton Creek Agreement

Thomas Mattis, City Manager

STATE OF TEXAS §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 18th day of September, 2008, by Vera Massaro, Assistant Secretary of Qualico Developments, U.S., sole manager of Qualico KP, LLC.

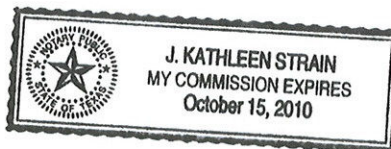
J. Kathleen Strain
Notary Public - State of Texas



STATE OF TEXAS §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 10th day of September, 2008, by Brian Higgins, Assistant Secretary of Qualico Developments, U.S., sole manager of Qualico KP, LLC.

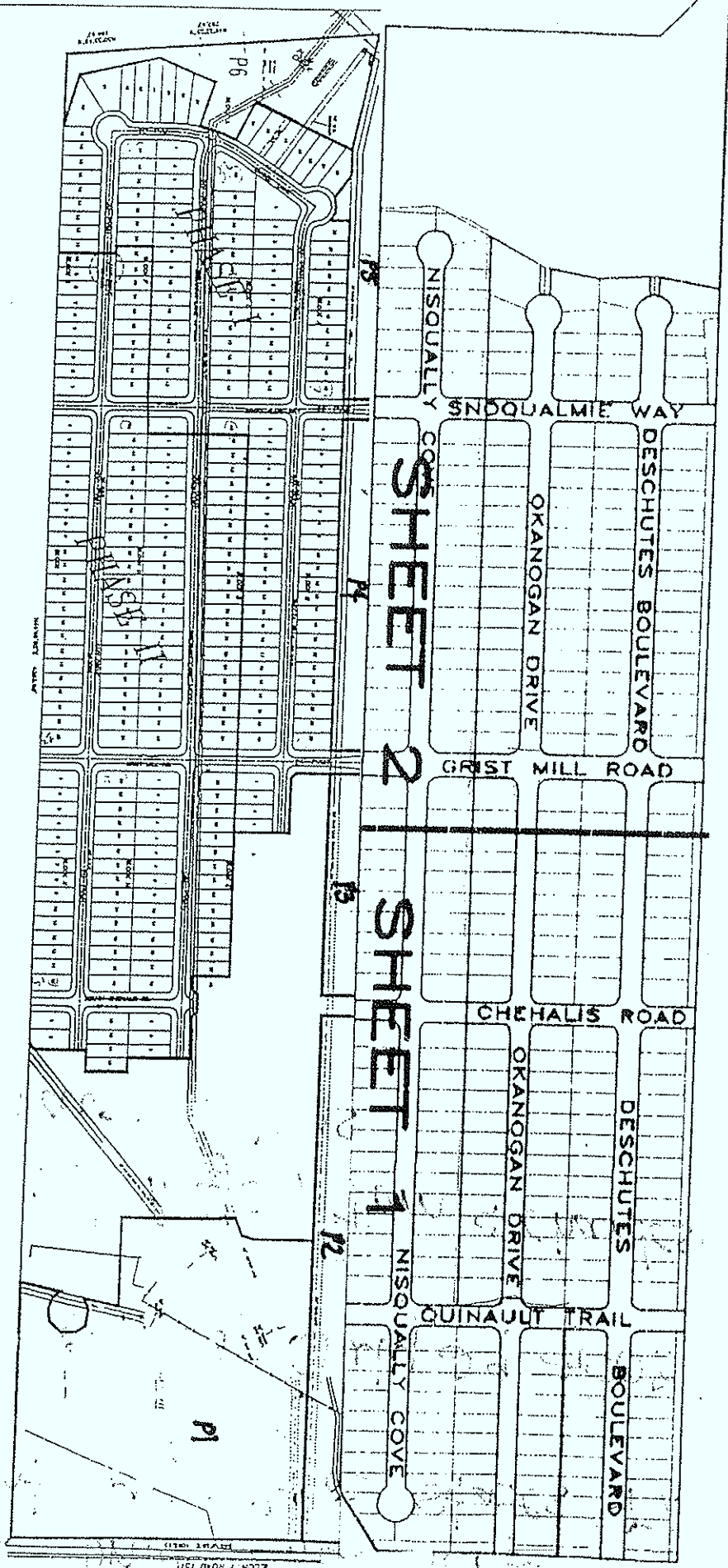
J. Kathleen Strain
Notary Public - State of Texas



After recording, return to:

Qualico KP, LLC
7940 Shoal Creek Blvd., Suite 201
Austin, TX 78757

Amendment Number 1
Bunton Creek Agreement



C.R. 151

DAVE M. OWENS JR.
 242 W. 10th St.
 P.O. Box 1000
 74401 Bismarck, ND

BUNTON CREEK VILLAGE
 BUNTON LAKE (COUNTY ROAD 151)
 KYLE, HAYS COUNTY, TEXAS
 DEVELOPER:
 CAD-L, LTD.

PRELIMINARY

| | |
|------|-------------|
| DATE | DESCRIPTION |
| | |
| | |
| | |

NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT SPECIFICALLY AUTHORIZED BY THE ENGINEER.

| | |
|------|-------------|
| DATE | DESCRIPTION |
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THE CIVIL ENGINEER'S SEAL AND SIGNATURE SHALL BE PLACED IN THIS SPACE.

DRAFT

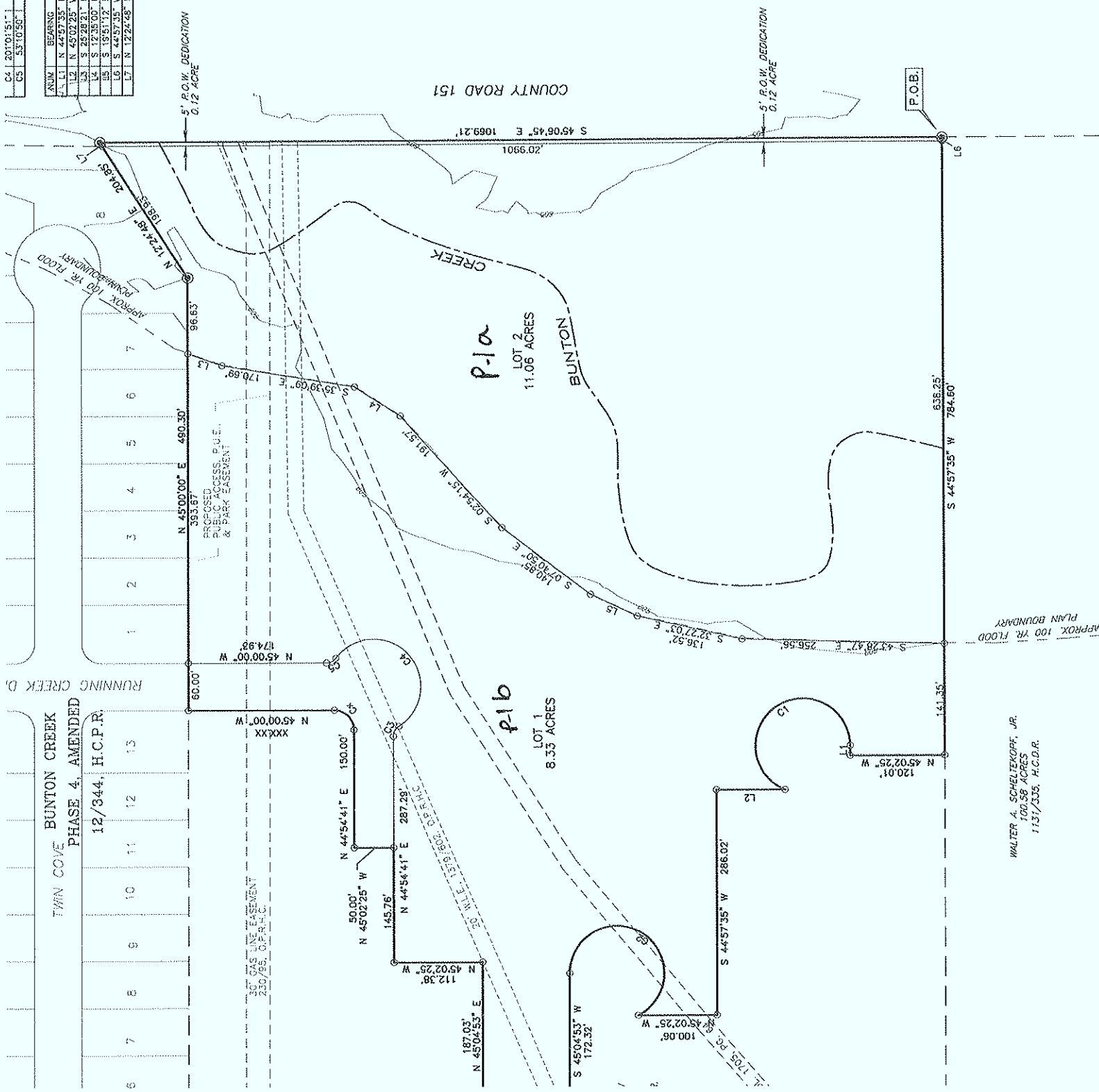
P.L.E.
R.O.W.
W.W.E.
W.E.
D.E.

DEVELOPER:
ENGINEER:
SURVEYOR:

NO. OF BL
NO. OF SH
NO. OF PA
TOTAL NO.

| | | | | | |
|----|------------|---------|--------|---------------|---------|
| C4 | 207°01'51" | 210.52' | 66.00' | N 02°20'06" E | 117.98' |
| C5 | 53°10'56" | 13.92' | 15.00' | N 71°35'25" W | 13.43' |

| NUM | BEARING | DISTANCE |
|-----|---------------|----------|
| L1 | N 44°57'35" E | 12.58' |
| L2 | N 45°02'25" W | 87.42' |
| L3 | S 25°28'21" E | 45.53' |
| L4 | S 12°35'00" E | 69.07' |
| L5 | S 19°51'12" E | 65.76' |
| L6 | S 44°57'35" W | 5.00' |
| L7 | N 12°24'48" E | 5.93' |



WALTER A. SCHELTEKOPF, JR.
100.58 ACRES
1157/3305, H.C.D.R.

UNTON CREEK

COMMUNITY PARK

Qualico Communities



NORTH
DATE: October 1, 2007



PRELIMINARY CONCEPTUAL PLAN - SUBJECT TO CHANGE
 This is a preliminary, conceptual plan and may not represent the Community Park as it may be finally completed. The developer reserves the right to modify its plans from time to time as it may deem appropriate. Actual construction may deviate from any conceptual plan.