

STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS               §

SECOND AMENDED DEVELOPMENT AGREEMENT

BETWEEN CITY OF KYLE, TEXAS AND CLAYTON PROPERTIES GROUP, INC. DBA BROHN HOMES

This amended Development Agreement (“Second Amended Agreement”) is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the “City”) and Clayton Properties Group, Inc. d/b/a Brohn Homes (“Developer”). The term “Parties” or “Party” means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, Developer is the owner of a parcel of real property (the “Property” or “Parcel”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, on May 5th, 2015, the City and the Lehman Family Trust, a former owner of the Property, entered into that one certain Amended and Restated Section 212.172 Texas Local Government Code Development Agreement recorded in the Official Public Records of Hays County, Texas (“Prior Agreement”).

WHEREAS, on August 6, 2019 the City and Clayton Properties Group, Inc. d/b/a Brohn Homes entered into an amendment to that one certain Amended Development Agreement recorded in the Official Public Records of Hays County, Texas (“Amended Prior Agreement”) a copy of which is attached as Exhibit “A”;

WHEREAS, the Developer wishes to construct a detention/retention/wet pond for the management and discharge of storm water within the development titled the Detention pond in Section One of Casetta Ranch, a copy of a map of which is attached as Exhibit “B” (the “Pond”);

WHEREAS, the Developer wishes to employ the use of pumps (the “Pond Pumps”) for the purpose of discharging stormwater from the Pond and the City is willing to allow the use of a pump in the Pond with the imposition of certain commitments and conditions set forth herein;

WHEREAS, the City and Developer desire to amend the Amended Prior Agreement to incorporate such commitments and conditions for the maintenance of the Pond;

NOW, THEREFORE, pursuant to 9.06 of the Amended Prior Agreement and for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

- 1.01 Purpose. This Second Amended Agreement modifies and amends the Amended Prior Agreement only as set forth herein by the Parties, but not otherwise. In all other respects the Amended Prior Agreement is restated and affirmed.
- 1.02 Authority. Authority for Developer and the City to enter into this Second Amended Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, (“Subchapter G”), Chapter 395 of the Tex. Local Government Code; and such other statutes as may be applicable.

3.03 **Subdivision Infrastructure.** Is hereby amended by adding the following subparagraphs (d), (e), (f), and (g).

(d) The Pond, as shown on the attached Exhibit “B” containing pump(s) for the discharge of storm water, electrical systems for the functioning of the Pond Pumps and back-up electrical connections for the operation of the Pond Pump(s) in the event of an electrical failure, shall in all respects be owned, operated and maintained by the HOA properly established by the Developer and shall obligate the HOA to the following:

- i) Enter into and maintain a contract with a properly licensed and bonded contractor for the operation and maintenance of the Pond (the “Pond Operator”), requiring at least the following obligations;
  - a) Maintaining a bi-annual log of the maintenance of the Pond and the Pond Pump(s).
  - b) Inspection of the condition and functionality of the Pond and Pond Pump(s).
  - c) Clear, remove rubbish and other refuse, mow the area of the Pond lot and specifically maintain the Pond to function as intended.
  - d) Prepare and deliver to the City not less frequently than annually, in the form acceptable to the City, a copy of which is attached as Exhibit “C”, a report on the maintenance of the Pond, the condition of the Pond Pump(s) and back-up electrical connections (the “Annual Report”).
  - e) Provide for Wet well Pond Pump(s) and/or control panel to include SCADA (Supervisory Control And Data Acquisition), landline, cellular based auto-dialer or equivalent automated notification system. Automated notification shall include at a minimum when power is off (lost) and when Pump are on. Notification to be tested with Pond Operator prior to final walk through. City inspector is to be notified and present at testing.
- ii) Provide the Annual Report to the City.

(e) Notwithstanding anything to the contrary contained herein or in the Amended Prior Agreement, the HOA shall provide for the ability of the City to periodically access the Pond, Pond Pump(s), automated notification system, power supply, back-up power connections and maintenance log for proper operation and maintenance, with an authorized HOA representative present, if desired by the HOA.

maintenance log for proper operation and maintenance, with an authorized HOA representative present, if desired by the HOA.

(f) The final plats for the subdivision shall contain a plat note in a form acceptable to the City that sets forth the obligation of the HOA to maintain the Pond and the Pond Pumps in accordance with this Second Amended Agreement.


(g) The Developer shall establish bylaws, rules, regulations and restrictive covenants (collectively the "Association Regulations") to assure the HOA performs and accomplishes the duties and purposes required to be performed and accomplished by the HOA pursuant to subsection 3.03(d) (the "Maintenance Obligation"). The HOA's Maintenance Obligation shall be noted in the restrictive covenants filed of record for the subdivision. The Association Regulations will establish periodic HOA dues and assessments, to be charged and paid by the lot owners within the Property, that are and will be sufficient to maintain the Pond and Pond Pumps. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the HOA-Maintained Improvements, and to provide funds required for the management and operation of the Association. HOA dues and assessments required to be established, maintained and collected by the Owners' Association pursuant to this Agreement shall be in addition to, and not in lieu of, any and all other fees, charges and assessments that will be applicable to the Property.

All other terms and conditions of the Amended Prior Agreement are hereby ratified by the parties and shall remain in full force and effect.

SIGNED and executed this 30<sup>th</sup> day of October, 2020.

Clayton Properties Group Inc. (dba – Brohn Homes)

By:

  
Adam Boenig, Vice President

CITY OF KYLE, TEXAS

By: *Travis Mitchell*  
Travis Mitchell, Mayor

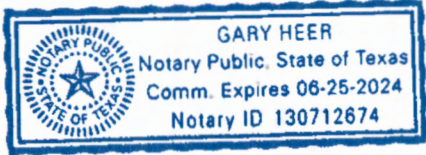
ATTEST:

*Jennifer Vetrano*  
Jennifer Vetrano, City Secretary

THE STATE OF TEXAS §  
  §  
COUNTY OF Travis §

This instrument was acknowledged before me on October 30, 2020, by Adam Boenig, Vice President of Clayton Properties Group inc (dba Brohn Homes).

*Gary Heer*  
Notary Public in and for the State of Texas





# Exhibit A

STATE OF TEXAS           §  
  §  
COUNTY OF HAYS       §

**DEVELOPMENT AGREEMENT  
BETWEEN CITY OF KYLE, TEXAS AND CLAYTON PROPERTIES GROUP, INC.  
DBA BROHN HOMES**

This Development Agreement (“Agreement”) is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the “City”) and Clayton Properties Group, Inc. d/b/a Brohn Homes (“Developer”). The term “Parties” or “Party” means the City and the Developer collectively or singularly.

**RECITALS**

WHEREAS, Developer has purchased a parcel of real property (the “Property” or “Parcel”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, on May 5th, 2015, the City and the Lehman Family Trust, a former owner of the Property, entered into that one certain Amended and Restated Section 212.172 Texas Local Government Code Development Agreement recorded in the Official Public Records of Hays County, Texas (“Prior Agreement”) attached as Exhibit “B”;

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the Parties agree that the extension of centralized utilities to new development provides superior environmental protections to those available from individual water wells and septic systems;

WHEREAS, the Parties agree that the roundabout, additional right-of-way and other connectivity considerations to be provided by Developer are a clear and public benefit;

WHEREAS, the City council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public; and,

WHEREAS, for the above reasons Developer and the City desire to enter into this agreement.

**NOW, THEREFORE**, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

**ARTICLE 1**  
**PURPOSE, AUTHORITY, TERM AND BENEFITS**

**1.01 Purpose.** This Agreement modifies, and amends any Prior Agreement as agreed upon herein by the Parties.

**1.02 Authority.** Authority for Developer and the City to enter into this Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, (“Subchapter G”), Chapter 395 of the Tex. Local Government Code; and such other statutes as may be applicable.

**1.03 Project Defined.** The Project established by the Agreement includes a master-planned residential subdivision that will include single family lots, amenity area(s) with recreational facilities, and an intersection improvement to Bunton Creek and Goforth intersection. The Project, includes the subdivision of the Property, the construction of off-site and on-site utility facilities and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (the “Project”). The Project may include multiple phases for platting and construction purposes.

**1.04 Benefits.**

(a) The City desires to enter into this Agreement to provide additional control to the development standards for the Property, to allow potential purchasers of the Property to submit preliminary plan and final plat applications to the City for review, and to assess the development viability of the Property without requiring or causing the annexation of the Property except as provided for under ARTICLE 5 of this Agreement.

(b) This Agreement provides: (i) for the submittal and review of preliminary plans and final plats for the Property without submitting a request for voluntary annexation of the Property; (ii) alternative standards under certain City ordinances for the benefit of the Property but only as allowed under Section 212.172 of the Tex. Local Government Code; (iii) the City’s commitment to provide water and wastewater service to Property based on the Concept Plan; and (iv) alternative standards regarding perimeter streets. The City’s execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Developer’s execution of this Agreement constitutes a valid and binding obligation of the Developer.

**1.05 Term.** The term of this Agreement will commence on the Effective Date and continue fifteen (15) years from the Effective date (“Term” or “Initial Term”). After the Initial Term, this Agreement may be extended for five successive five-year periods upon written agreement signed by Developer and the City; provided that the total term of the agreement, including the Initial Term and extensions, does not exceed 45 (forty-five) years.

**1.06 Control of Development.** Developer intends to develop the Property in a manner which results in enhancing the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (the “Code”) to the contrary, the timing and sequencing of the development of the Property will be based on market demand and conditions and will be completed as and when Developer determines it to be economically feasible.

## **ARTICLE 2 DEVELOPMENT STANDARDS AND REVIEW PROCEDURES**

**2.01 Generally.** Except as provided in this Agreement, all development applications and development of the Property will comply with the Code, as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the Property has not been annexed by the City. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control.

**2.02 Residential.** The Parties agree that the Property shall be subject to and developed pursuant to the ordinances, rules, regulations, use and development standards as if subject to the City’s R-1-3 zoning district, except as otherwise provided for herein. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code, the Project will be allowed;

(a) Lots in the Project may be Alley Loaded Lots with thirty-five (35’) foot and/or forty (40’) foot widths.

(b) Lots in the Project may be Front Load Lots with fifty (50’) foot, sixty (60’) foot and/or greater widths. Lots with widths less than fifty (50’) feet must be alley loaded.

No lots will be less than thirty-five feet (35’) in width and any such lot shall be alley loaded, and the maximum number of thirty-five foot (35’) wide single family residential lots allowed to be subdivided on the Property will be no greater than fifteen percent (15%) of the total number of single family residential lots shown on the preliminary plan approved for the Property. The City agrees that the residential lots may be all forty foot wide (40’) wide lots, fifty foot wide (50’) lots or sixty foot wide (60’) lots or a combination of forty foot wide (40’) wide lots, fifty foot wide (50’) lots and sixty foot wide (60’) lots or a combination of thirty-five foot wide (35’) lots, forty foot wide (40’) lots, fifty foot wide (50’) lots, sixty foot wide (60’) or greater width lots, so long as the total percentage of thirty-five (35’) foot lots does not exceed 15% of all single family lots. For purposes of clarifying the preceding sentence, there is no limit to the number of thirty-five foot (35’) wide lots that may be contained in an individual final plat so long as the cumulative total of thirty-five foot (35’) wide single family residential lots contained in all recorded final plats of the Property do not exceed fifteen percent (15%) of all single family lots shown on the approved preliminary plan. Also, there is no limit on the maximum width of residential lots within the Project. A property owners’ association neighborhood park, including, an amenity center and swimming pool for the residents living on the Property, is a permitted use of the Property. Plan View and Street Scape illustrations (Reflecting 35’ wide alley load lots) are attached as Exhibit” C”.

(c) Alley Load Lots with a width of thirty-five (35') feet will have a 10 foot front yard building set-back, 10 foot rear yard building set-back, 5 foot side yard building set-back and 10 foot street side yard building set back. Alley Load Lots with a width of forty (40') feet will have a 10 foot front yard building set-back, 10 foot rear yard building set-back, 5 foot side yard building set-back and 10 foot street side yard building set back

(d) Local streets within the Project may be designed, engineered and constructed with twenty-eight (28) feet of pavement width measured from face of curb to face of curb with right of way, as required by applicable Code requirements, or with intermittent wider sections of pavement to allow for on-street parking, at intervals and sufficient widths to allow for adequate clearance for fire protection vehicles approved by the City Engineer and the Emergency Services District with reviewing authority over the Property.

(e) The City acknowledges that Park Land Dedication fees shall be computed on the basis of \$750 per dwelling lot and shall be collected at the time of final plat recording. Park Development fees shall be computed on the basis of \$750 per dwelling lot and shall be collected at the time final plat recording. All Park Land Dedication and Park Development fees shall be paid in phases in an amount not to exceed \$1,500 per final platted dwelling lot as sections of the development are final platted and recorded. In as much as the Developer is dedicating and developing active parks and hike and bike trails in excess of 3 acres, \$300 per final platted lot, of the total Park Land Dedication and Park Development fees will be dedicated to and used, by the City, for traffic improvements to Bunton Lane, west of the intersection with Go Forth Lane. A letter from the City regarding the Park Land Dedication and the Park Development fees associated with the Project is attached as Exhibit "D".

(f) Block lengths within the Project shall be allowed up to 1,200 feet (per ordinance) as a result of using curvilinear streets, paved alleys and restrictions in crossing a gas main that bisects the Projects.

(g) The City agrees that in the event the owner of such property has not donated, or the Developer has not acquired, the right-of-way necessary for the Traffic Circle within 30 days of the execution of this development agreement, the City agrees to consider and pass a resolution recognizing a public purpose and authorizing the use of eminent domain by the City for the purpose of acquiring such right-of-way. In any event, once Developer has dedicated, or agreed in writing to dedicate, the right-of-way necessary from the Project for the Traffic Circle, the acquisition of right-of-way from others than Developer will be the responsibility of the City and will not delay or be a cause for the City to delay the review and/or the approval of applications for permits necessary for the development of the Project.

(h) In the event the City requires the extension of a twelve (12) inch water line to and through the Project, (the "Water Line Project"), and a twelve (12) inch water line is in excess of the size and capacity of a water line required by the City Code that is necessary for the delivery of water service to the Project as required by the City Code, the City will either reimburse the Developer, or take whatever steps necessary to insure that subsequent users of the water infrastructure, reimburse Developer for the cost of the design, engineering and construction of that portion of the water infrastructure over and above that which is necessary for the Project as provided in Section 4.05(b) and Exhibit "K". In the event that the City requires the water line to be oversized, the City's cost-participation amount shall be determined in accordance with Section 4.05(b) and Exhibit "K".

(i) In the event the City requires the extension of wastewater infrastructure inside or outside of the boundaries of the Project in a size and/or capacity required by the City Code in excess of that which is necessary for the delivery of wastewater service to the Project, the City will either reimburse the Developer, or take whatever steps necessary to insure that subsequent users of the wastewater infrastructure reimburse Developer, for the cost of the design, engineering and construction of that portion of the wastewater infrastructure over and above that which is necessary for the Project, as provided in Section 4.05(b) and Exhibit “K”. In the event that the City requires the wastewater line to be oversized, the City’s cost-participation amount shall be determined in accordance with Section 4.05(b) and Exhibit “K”.

(j) Ten percent (10%) of all lots in the Project may be Alley Load Lots with a minimum lot area of 4200 square feet. All other Alley Load Lots within the Project shall have a minimum lot area of 4690 square feet.

(k) All alleys within the Project will be private and maintained by a properly formed property owners association. The City shall have no responsibility for the maintenance of alleys within the Project.

(l) All garages in the project shall have a minimum enclosed area of 360 square feet.

(m) All alley load lots will be developed to provide two durably surfaced, off-street parking spaces of no less than (nine (9’) feet by eighteen and one-half (18 ½’) feet) each for a combined square footage of approximately three hundred and thirty-three (333’) square feet, located adjacent to each garage, hereinafter (“Guest Parking”). Up to four hundred (400’) square feet of durably surfaced off-street Guest Parking located on alley load lots shall be excluded from the computation of impervious cover on a per lot basis. Section 53-934D of the Style Guide and related Code requirement, as to on-site storage, may be satisfied with alternative compliance by providing a combination of (a) garage storage as shown on the attached Exhibit “M” and (b) attic storage with a pull-down ladder, so long as the totals on-site storage is no less than one hundred forty (140’) square feet.

**2.03 Concept Plan.** Developer has previously submitted to the City a concept plan for the subdivision and development of the Property. A copy of the revised concept plan, which illustrates a combination of thirty-five (35’) and forty (40’) foot wide alley load lots and fifty (50’) foot wide front load lots, is attached hereto and incorporated herein for all purposes as Exhibit “E” (“Concept Plan”). The Concept Plan will be allowed to be developed and platted in multiple phases for platting. Pursuant to Section 212.172, Tex. Local Government Code, Developer hereby confirms that the Concept Plan for the subdivision of the Property complies with the City’s Subdivision Ordinance requirements for concept plans, the zoning district regulations applicable to the Property as set forth in this Agreement, the Style Guide and the City’s Comprehensive Master Plan. The Concept Plan constitutes a development plan for the Property, as provided in Subchapter G, Texas Local Government Code.

Subject to the allowable uses set forth in Sections 2.02 and 2.03 hereof, a) the total allowable density of development of the Property shall be limited by the number of Living Unit Equivalents (“LUEs”) as measured for water and wastewater service connections, and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the density of development of the Property shall not exceed four hundred twenty

five (425) LUEs. So long as Developer does not increase the total density of allowable development, as measured by water and wastewater service connections, Developer may amend the Concept Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Concept Plan will expire upon the expiration or termination of this Agreement.

**2.04 Preliminary Plan.** Developer may submit to the City an application for a preliminary plan for the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property. The preliminary plan must comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth in Sections 2.02 and 2.03. The preliminary plan may show lot layouts and street alignments different than shown in the Concept Plan so long as the total level of development, as measured by water and wastewater service connections, does not increase above four hundred twenty five 425 LUEs. Developer may request the City, including the City's Planning and Zoning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan. If the preliminary plan application complies with the terms of this Agreement, the City will approve the preliminary plan upon the request of Developer; provided that the Developer has submitted to the City a request or petition for voluntary annexation as provided in Section 5.02(a) or (b).

**2.05 Subdivision Plats.** Subdivision plats may be approved and constructed in one or more sections. Developer may submit to the City an application for a subdivision plat for a portion of the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property. Developer may submit subdivision construction plans concurrently with a subdivision plat application.

**2.06 City Review and Approval.** This Agreement shall govern the review and approval of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. In anticipation of the voluntary annexation of the Property, the City does not require Developer to submit any application to Hays County for review or approval. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. The City will approve applications for preliminary plans, subdivision plats and site development permits for the Property if Developer has made a request or petition for voluntary annexation pursuant to Sections 5.02(a) or (b) below, and said applications are in accordance with the requirements of this Agreement. Preliminary plans, subdivision plats, subdivision construction plans, and site development plans hereafter approved pursuant to this Agreement shall expire on the latter of the expiration of the Initial Term of this Agreement, unless the parties agree in writing otherwise, or the date established by the Code.

**2.07 Other Fees.** Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code as established on the date that the fee is paid, unless the fee is established at another point in time under State Law or the City Code.

**2.08 Fencing.** Developer shall construct and the Developer, or a properly formed property owners association, will maintain in like new condition, repair or replace a minimum six foot (6') tall masonry fence, as that term is defined in the Code and as shown on the attached Exhibit "F" ("Fencing Plan"), adjacent to Bunton Creek Road on residential lots abutting perimeter roads. Owner shall construct and the Owner, or a properly formed property owners association, will maintain, repair or replace at minimum a six foot (6') tall decorative metal fence along parkland, open space and drainage facilities that are fenced. This does not include the portion of a back yard fence that may front one of these public improvements or places, but refers to any fencing put in place for benefit of parkland, open space or drainage facilities. In no case shall these fences be dedicated or conveyed to the City. Developer shall assign to a property and/or property owners association the obligation to maintain, repair or replace said fence as required by the Code.

**2.09 Additional Amenities.** Developer shall provide additional amenities to the Property as follows. Such amenities shall be provided for each phase of development as it is developed. Additional amenities include:

(a) Developer shall form a property owners association as a non-profit corporation ("POA") at the completion of the first phase of development, and the POA shall require dues and be responsible for the maintenance, repair and replacement of any and all amenities, including all common spaces and any other improvements required to be maintained by the POA under this Agreement or the City Code, made available to occupants of the Property.

(b) Decorative street lighting or street lighting in compliance with Pedernales Electric Cooperative standards, as published on the Effective Date (the "Street Lighting Plan") will be maintained by the POA. The Street Lighting Plan will not require approval by the Planning and Zoning Commission. Street lighting will not be maintained by the City.

(c) A landscaping plan will be submitted for each final plat and shall be similar in style to other planned communities such as Plum Creek or Hometown Kyle which generally includes aggressive landscape control powers to the POA, required strip plantings, landscaped medians, and guaranteed sizes and numbers of plantings per home lot, as generally as required by the Code. The Landscaping Plan will comply with the City Code will be agreed upon by the Developer and the City and will be subject to approval by the city arborist, which approval will not be unreasonably denied, delayed or conditioned.

(d) The Project will abide by all applicable City Codes as if the project were developed inside the City limits, except where the terms of this Agreement modify such Code. To the extent there are conflicts between the terms of the Code, including the zoning regulations, and the terms of this Agreement, this Agreement will control.

### **ARTICLE 3 PUBLIC STREETS AND SUBDIVISION INFRASTRUCTURE**

**3.01 Intersection Improvements at Goforth and Bunton Creek.** The requirements of Section 41-137(p) of the Code apply to the Project except as provided in this Section 3.01.

Developer, as a part of the initial phase of the development on the Property, agrees to and shall construct, and agrees to use as the sole means of ingress and egress for construction vehicles for the initial phase of development, a construction entrance as shown on the attached Exhibit “G” together with the improvements to the intersection of Goforth and Bunton Creek, as approved by the City (the “Intersection Improvements”). If the intersection is reconstructed as a Traffic Circle such as depicted on the attached Exhibit “H” (“Proposed Traffic Circle Plan”), the City shall apply the construction cost of said Intersection Improvements as a credit toward the Adjacent Lane Mile (ALM) Fee due by the Developer (“ALM Obligation”). Construction costs may include the total cost to Developer, including the design, engineering and construction of the Traffic Circle referenced herein, including all costs of acquisition of right-of-way outside of the Property, design, engineering, permitting and attorney and consulting fees. If credits received this way should not exceed the Developer’s obligation for the ALM, the Developer shall pay to the City the difference as determined on a per lot basis in accordance with the Code, at final plat recordation. Should there be more Developer costs for the Intersection Improvement, than ALM Obligation, Developer shall not be responsible for making any additional payment to the City for the Developer’s ALM Obligation. Additionally, the Developer will not be entitled to any reimbursement from the City should the cost of the Intersection Improvement exceed the Developer’s ALM Obligation. The Developer’s ALM fee obligation, payable on a per final platted lot basis at the time of final plat approval, shall in no event exceed the product of the maximum ALM fee of \$1,228.08 per final platted lot. In the event that PEC, the City or other governmental, quasi-governmental entities and/or agencies, with jurisdiction, cause the Traffic Circle to be modified from the Proposed Traffic Circle Plan and such modifications cause an increase in the estimated cost of the Traffic Circle, the Developer will be reimbursed through ALM fees paid to the City as a result of other development projects.

**3.02 Open and Common Space.** The duly formed POA shall have the responsibility or obligation to maintain, operate, repair or replace all Open and Common Space in accordance with the Code and with the approved Landscaping plan submitted as a part of the Site Plan.

**3.03 Subdivision Infrastructure.**

(a) All public streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property or outside the boundaries of the Property required to serve the Property (the “Subdivision Infrastructure”) will be constructed by Developer to meet Code standards, except as provided for herein, and will be dedicated and conveyed to the City at no cost to the City.

(b) Pavement width from curb face to curb face shall be twenty-eight feet (28’). Alleys and alley access shall remain private, and be the responsibility of a duly formed and mandatory dues paying POA.

(c) Due to the tie-in to Goforth a variance to design criteria to allow a minimum street radius of 300’ for Collector Streets is hereby granted under Section 41-137 (e) of the applicable regulations of the City of Kyle.



(d) Variances from the Code are hereby granted to allow for the widths of private alleys, restricted to one-way traffic, in the Project to be constructed with twelve (12) feet of pavement within an (18) foot wide access easement and private alleys, providing for two-way traffic, to be constructed with of twenty-four (24) feet of pavement within a thirty (30) foot wide access easement.

**3.04 Satisfactory Completion of Developer Improvements.** The term “Developer Improvements” includes Subdivision Infrastructure and Utility Improvements, as defined herein. Upon completion of construction of each of Developer Improvements in accordance with the City-approved construction plans, good engineering practices, and Section 41-53(h) and (j), the City shall accept the Developer Improvements for ownership, maintenance, and operation, except for any such improvements that are required to be owned and/or maintained by the Developer or the POA under this Agreement or the City Code. The City shall not unreasonably deny, delay, or condition its acceptance of such Developer Improvement.

**3.05 City Acceptance of Developer Improvements.** As a precondition to the City’s final acceptance of a Developer Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City’s ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Developer Improvement to be accepted will also be delivered to the City and any other items required by the City Code. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City’s acceptance of Developer Improvement.

**3.06 City to Own, Operate and Maintain Developer Improvements.** From and after the time of the City’s final acceptance of a Developer Improvement, the City will own, operate, and maintain each Developer Improvement and shall be responsible for all costs associated with same; provided, however, alleys, decorative street lights, joint use areas, multiuse trails and any other improvements that are required to be owned and/or maintained by the Developer or the POA under this Agreement or the City Code will be maintained by Developer or the POA. Upon the City’s acceptance of all the Developer Improvements within a particular subdivision plat and the City’s acceptance of water and wastewater service lines within said recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City’s applicable utility and connection fees are paid and that such connections meet the City’s ordinance and technical requirements.

## ARTICLE 4 WATER AND WASTEWATER SERVICE

**4.01 Intent of the Parties Regarding Utility Services.** As of the Effective Date, and again at the time of final plat approval, the City represents that the City has and will have sufficient

water and wastewater treatment capacity to allow service connections for four hundred twenty five 425 LUEs water and wastewater service to the Property. The City represents that it has rights to sufficient raw water to meet its overall service obligations, including providing water service to the Property in accordance with the terms of this Agreement. The Parties acknowledge that the Property will be built out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires certainty regarding the City's plans for meeting the City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement. The Parties acknowledge that the design engineering and construction of an operational utility improvement can require two (2) or more years. Notwithstanding, the City agrees and warrants that it will take whatever steps are necessary to insure that the City can and will provide four hundred twenty five (425) LUEs of water and wastewater service incrementally to the Project as and when final plats are approved within the Project.

#### **4.02 General Conditions For Connections to the City Utility System.**

(a) The Parties acknowledge that the City cannot deliver wastewater services to the Property boundary unless and until the Bunton Creek Sewer Interceptor Phase 3.1 is complete. In the event the City has not completed construction of the Bunton Creek Sewer Interceptor Phase 3.1 to the Property before the expiration of 6 months from the Effective Date, the City hereby expressly authorizes and approves the Walton Line, shown on the attached Exhibit "I", as the sole and exclusive method by which wastewater service will be provided to the Project by the City. In the event the City should require that the Walton Line be designed, engineered and constructed to a size greater than that which is necessary to serve the Project and required by the City Code and the Walton property ("Oversized Walton Line"), all costs and expenses of Developer in the design, engineering and construction of the oversized portion of the Oversized Walton Line shall be reimbursed to Developer by the City through the collection, and payment to Developer, of capital recovery fees from other users of the Walton Line or a lump sum payment in the City's sole discretion, in accordance with Exhibit "K". If reimbursement through subsequent user fees has not result in the 100% reimbursement to Developer within 2 years of the completion of the Walton Line, the City will pay the outstanding unreimbursed amount.

(b) If the City modifies: (i) the definition of an LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Property; (iii) fire flow requirements for the issuance of building permits and certificates of occupancy without the installation of a sprinkler system; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to any portion of the Property; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be

necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to a request for more than four hundred twenty five 425 LUEs of water and wastewater service. If the modifications described in the preceding sentence are required by federal or state law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

**4.03 Service Commitment.** The City hereby commits four hundred twenty five 425 LUEs of water and wastewater service to the Property.

**4.04 Service Connections.** The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit or structure for another permitted use to the City's water and wastewater system upon completion and City acceptance of the Utility Improvements, payment of applicable fees, establishment of a utility account, and a Certificate of Occupancy being issued for the residential unit or structure and provide water and wastewater service for the residential unit or structure on the same terms and conditions as provided to all other areas of the City.

**4.05 Utility Improvement Construction Obligations.**

(a) **Developer.** Developer shall be solely responsible for the engineering and construction of all water and wastewater lines and facilities within the Property and any offsite utility extensions needed to serve the property, including but not limited to the Water Line Project and the Wastewater Line Project described in Exhibits "J" and "K" (this does not include the Bunton Creek Interceptor project which is a City project) (collectively, the "Utility Improvements").

(b) **City Oversizing.** City may, at its discretion, require the oversizing of certain Utility Improvements, and if the City exercises this right during or before plan review, so long as the design, engineering and construction of such oversized Utility Improvements does not unreasonably delay Developer's development, Developer will be responsible for the costs associated with providing the appropriate sized infrastructure to the Project. The City will pay costs associated with the upsizing, the cost of which shall be determined by the Developer and City Engineer generally in accordance with Exhibits "J" and "K".

**4.06 Service Units Defined.** The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on Chapter 50 ("Utilities"), Article VI, of the Code, which is incorporated into this Agreement for the limited purposes set forth in this Agreement.

**4.07 Use of City Property and Easements.** The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements.

The City agrees to cooperate and support Developer's acquisition of necessary easements from third parties as determined by the city council.

**4.08 Easement Acquisition.** The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the Utility Improvements; therefore, the City agrees to cooperate and support Developer's acquisition of necessary easements from third parties.

**4.09 Use of Condemnation.** The city council has found that the development of the Property in compliance with this Agreement will benefit the economy of the City and serve the best interests and welfare of the public and that the utility improvements and the transportation improvements along Bunton Creek Road and Goforth Road serve a public purpose. Therefore, if Developer determines that it may be necessary for the City to use its eminent domain powers to acquire property or an interest in property for use as right of way and/or to install a Utility Improvement required by the City pursuant to this Agreement, Developer will make a request to the City to proceed with the acquisition of property and/or easements in compliance with applicable law. The City will act on such a request within sixty (60) calendar days. If the city council makes a finding that such requested easement is necessary to accomplish a public purpose and is otherwise lawful, the city council may exercise its powers of eminent domain to attempt to acquire the requested property and/or easement. The Parties agree to work cooperatively toward allowing the initiation of construction of Utility Improvements, transportation improvements along Bunton Creek Road and Goforth Road and Developer Improvement on property and/or easements being acquired by the City at the earliest time lawfully permitted. Developer, subject to the terms of this Agreement, shall be responsible for all costs incurred for the acquisition of such easements or property necessary for the construction of Utility Improvements and transportation improvements along Bunton Creek Road and Goforth Road, outside of the Property, whether by condemnation or conveyance in lieu thereof, including the City's attorney's fees, legally-required bonds, and deposits required by the City. If the city council seeks condemnation, it will use reasonable efforts to pursue such within the minimum time allowed under state law.

## **ARTICLE 5 ANNEXATION**

**5.01 Annexation.** The City agrees that the Property will be annexed in accordance with this Agreement.

**5.02 Voluntary Annexation.**

(a) Developer may submit, at any time, a petition requesting the annexation of all or a portion of the Property; provided that submission of an annexation petition shall be submitted prior to, and shall be a condition precedent to, the City finally approving any preliminary plan, final plat, or related development document as provided in Section 2.06.

(b) If the city council begins annexation proceedings pursuant to this Section 5.02, Developer acknowledges that Section 43.052, Texas Local Government Code does not apply to

the City's annexation of the Property. Further, Developer agrees that a request for voluntary annexation pursuant to Section 5.02 (a) or (b) will constitute Developer's waiver of all rights Developer may have under Section 43.052, Texas Local Government Code.

**5.03 Municipal Service Plan.** The Parties agree to be bound and obligated to a municipal service plan ("Plan") negotiated by and between the Parties that is sufficient and adequate and hereby binds and obligates Developer, its grantees, successors, purchasers or assigns to install water, wastewater and drainage infrastructure required by this Agreement to service the Property and upon acceptance by the City, the City shall be obligated from such dedication and acceptance to maintain the infrastructure and to provide services. The Plan will be used as the municipal service plan when the City annexes the Property, in accordance with Exhibit "L". The City intends to annex the Property within ninety (90) days after the date of the first reading on the ordinance annexing the Property, if such annexation is approved and adopted by the city council. If the Plan conflicts with this Agreement, this agreement shall rule.

**5.04 Land Use Upon Annexation.** On the effective date of the annexation of the Property, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered for the uses and development standards set forth in this Agreement; unless Developer substantially amends or abandons the Project, defaults under this Agreement, or permits its Chapter 245, Local Government Code rights to expire. Developer may make application for the zoning of the Property at any time but not later than thirty (30) days after the effective date of the annexation. Upon the adoption of permanent zoning for the Property, the applicable City Code provisions will be subject to the terms, provisions and conditions of this Agreement.

## ARTICLE 6

### ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

**6.01 Assignment of Developer Rights.** Developer may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat; provided that the City has consented to the assignment, which will not be unreasonably withheld, delayed, or conditioned. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity and Developer will be released from its obligations under this Agreement upon delivery of a notice of assignment to the City. Any assignment of Developer's rights and obligations hereunder to an entity that is not affiliated with or related to Developer will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

**6.02 Lot Conveyance Not an Assignment.** The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to

constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

**6.03 Agreement Binding on Assigns.** This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

## **ARTICLE 7 DEFAULT AND NOTICE**

**7.01 Notice and Opportunity to Cure.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period, provided that the default must be cured within six months.

**7.02 Remedies for Default.** Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, with the exception of specific or strict performance, such as lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever; provided, however, Developer may enforce this Agreement as provided under §245.006 of the Texas Local Government Code.

**7.03 Enforcement.** The Parties may enforce this Agreement by any proceeding at law or equity except the City is not waiving its right to sovereign immunity nor may this paragraph 7.03 be interpreted as or otherwise construed to be a waiver except as to an action for specific or strict performance. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

**7.04 Litigation.** In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such specific action by the city council. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or

otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

**7.05 Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section 1; or (iii) one (1) business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Adam B. Boenig  
Vice President  
Clayton Properties Group Inc. d/b/a Brohn Homes  
6720 Vaught Ranch Rd, Suite 200  
Austin, Texas 78730  
P 512.320.8833  
Email Address: [adamb@brohnhomes.com](mailto:adamb@brohnhomes.com)

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

## **ARTICLE 8 PROPERTY AND MORTGAGEE OBLIGATIONS**

**8.01 Mortgage Acceptance.** Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

**8.02 Mortgage Protection.** This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property ("Lender") may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to

cooperate with Developer and its Lenders' representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

- (a) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 7.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.
- (b) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.
- (c) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

**8.03 Certificate of Compliance.** Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

- (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;
- (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and
- (c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

## **ARTICLE 9 MISCELLANEOUS**

**9.01 Multiple Originals.** The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

**9.02 Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be



amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

**9.03 Recordation.** A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

**9.04 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable in Hays County, Texas.

**9.05 Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**9.06 Termination or Amendment By Agreement.** This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination. The City may terminate this Agreement if the Developer does not obtain preliminary plat approval within five (5) years of the Effective Date. This Agreement will terminate if the preliminary plat expires during the term of this Agreement pursuant to the provisions governing expiration of preliminary plats set forth in the City Code.

**9.07 No Oral or Implied Waiver.** The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

**9.08 No Third-Party Beneficiary.** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

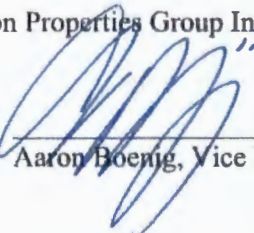
**9.09 Anti-Boycott Verification.** To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law the Company represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (a) boycotts Israel or (b) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

**9.10 Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law the Developer represents that the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

SIGNED and executed this 7<sup>th</sup> day of August, 2019.

Clayton Properties Group Inc. (dba – Brohn Homes)

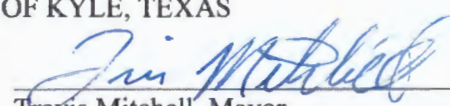
By: \_\_\_\_\_



Aaron Boenig, Vice President

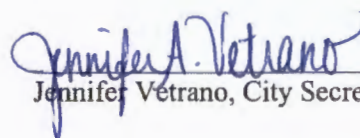
CITY OF KYLE, TEXAS

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



Travis Mitchell, Mayor

ATTEST:

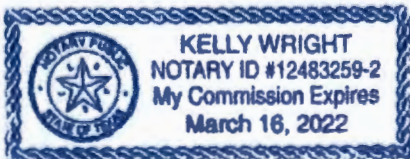


Jennifer Vetrano, City Secretary

THE STATE OF TEXAS    §  
  §  
COUNTY OF Travis   §

This instrument was acknowledged before me on July 23, 2019, by Aaron Boenig, Vice President of Clayton Properties Group Inc (dba Brohn Homes).

Kelly Wright  
Notary Public in and for the State of Texas



**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**



EXHIBIT "A"

FIELD NOTES DESCRIBING 97.646 ACRES OF LAND OUT OF THE MILTON B. ATKINSON SURVEY NO. 110 ABSTRACT NO. 21 AND THE JOHN STEWART LEAGUE ABS NO. 14 IN HAYS COUNTY, TEXAS AND BEING THAT CERTAIN 48.68 ACRE TRACT (TRACT 1) CONVEYED TO THEODORE AND HAZEL M. LEHMAN IN VOL. 280, PG. 213 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND THAT CERTAIN 50.11 ACRE TRACT (TRACT 2) CONVEYED TO THEODORE AND HAZEL M. LEHMAN IN VOL. 285, PG. 171 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, SAVE & EXCEPT THAT CERTAIN 2250 SQ. FT. CONVEYED TO THE CITY OF KYLE IN VOL. 3197, PG. 576 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND FURTHER SAVE & EXCEPT THAT CERTAIN 1.00 ACRE TRACT NOW CONTAINED IN LOT 2, BROD SUBDIVISION, RECORDED IN VOL. 16, PG. 156, PLAT RECORDS OF HAYS COUNTY, TEXAS; SAID 97.646 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron rod found at the west corner of the above referenced 99.57 acre tract same being the west corner of the 50.11 acre tract and the north line of the Lehman 175 Venture LP, Texas Limited Partnership tract recorded in Volume 2863, Page 592 of the Official Public Records of said County, for the most westerly corner hereof;

THENCE along the northwest line of the 50.11 acre tract and the east line of the remainder of Alfred H. Lippe and wife Edith Lippe second tract called 100 acre tract recorded in Volume 120, Page 382, and Volume 253 Page 773 N 44° 24' 44" E, a distance of 798.69 feet to a capped iron rod set for a westerly corner hereof; same being the most easterly corner of the above reference 100 acres tract and being a point in the south line of lot 2 of Brod Subdivision recorded in Volume 16 Page 156 of the plat records of said County;

THENCE S 45° 23' 09" E, 52.25 feet to a iron rod found for the most southeasterly corner of Lot 2, Brod Subdivision and an interior corner hereof;

THENCE N 44° 33' 08" E, along the south line of lot 2 832.85 feet to a iron rod found and the most northerly corner of the 50.11 acre tract and a point on the southern right of way line of Bunton Lane for the most Northerly corner hereof;

THENCE along the southerly right of way line of Bunton Lane S 44° 38' 03" E, 945.61 feet to a capped iron rod set for corner hereof;

THENCE continue along the southerly right of way line of Bunton Lane S 45° 21' 57" W, 11.39 feet to a capped iron rod set for corner hereof;

THENCE continue along the southerly right of way line of Bunton Lane S 44° 38' 03" E, 75.00 feet to a capped iron rod set at the most northwesterly corner of a 2250 square feet tract, Volume 3197, Page 576, for a corner hereof;

THENCE leave said right of way S 45° 21' 57" W, 30.00 feet to a capped iron rod set at the most southwesterly corner of said 2250 square feet tract, for a corner, hereof;

THENCE S 44° 38' 03" E, 75.00 feet to a capped iron rod set at the most northwesterly corner of said 2250 square feet tract, for a corner hereof;

THENCE N 45° 21' 57" E, 30.00 feet to a capped iron rod set at the most northeasterly corner of said 2250 square feet tract, to a point on the southerly right of way line of Bunton Lane for a corner hereof;

THENCE continue along the southerly right of way line of Bunton Lane and the northerly line of the 50.11 acre tract S 44° 38' 03" E, 191.94 feet to a iron rod found for the common corners of the above referenced 48.68 acre tract and the 50.11 acre tract for an angle point hereof;

THENCE continue along the southerly right of way line of Bunton Lane and the northerly line of the 48.68 acre tract S 44° 45' 34" E, 1318.76 feet to an iron pipe found to the most easterly corner of said 48.68 acre tract for the most easterly corner hereof; same being the northerly corner of the EVELN B. FRANKE tract recorded in Volume 1753 Page 458 of the Official Public Records of said County;

THENCE leave said right of way line of Bunton Lane along the southerly line of the 48.68 acre tract and the northerly line of the FRANKE Tract, S 44° 39' 27" W, 1609.18 feet to an iron rod found to the most southerly corner of said 48.68 acre tract and the north line of the Lehman 175 Venture LP, Texas Limited Partnership 235.82 acre tract recorded in Volume 2863, Page 592 for the most southerly corner hereof;

THENCE continue along the north line of said Lehman 175 Venture LP, Texas Limited Partnership tract N 44° 56' 48" W, in all a total distance of 2653.37 feet to the Place of Beginning and containing 97.646 acres of land.

BEARING BASIS S 76° 17' 18" E, 3093.67 feet being the east corner of the 48.68 acre tract and the west corner of the 50.11 acre tract.

THIS DESCRIPTION TO BE USED WITH THE ATTACHED SURVEY SKETCH ONLY.

  
Victor M. Garza RPLS 4740

10-11-17  
Date:

B & G Surveying, Inc.  
1404 W. North Loop Blvd.  
Austin, Texas 78758  
Phone (512) 458 6969  
Fax (512) 458 9845  
[www.bandgsurvey.com](http://www.bandgsurvey.com)  
B1014614



**EXHIBIT B**  
**PRIOR AGREEMENT**





**ARTICLE 1  
PURPOSES AND TERM**

**1.01 Purpose.** This Restated Agreement modifies, amends and replaces the Prior Agreement in its entirety as of the effective date of this Restated Agreement.

**1.02 Authority.** Authority for the Owner and the City to enter into this Restated Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, ("Subchapter G"); and Chapter 395, Tex. Local Government Code ("Chapter 395") and other statutes as may be applicable.

**1.03 Owner Execution.** The Owner acknowledges that each and every owner of the Property must sign this Restated Agreement in order for the Restated Agreement to take full effect, and the Owners who sign this Restated Agreement covenant and agree, jointly and severally, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Restated Agreement.

**1.04 Term.** The term of this Restated Agreement will commence on the Effective Date and continue for nine (9) years thereafter, unless sooner terminated under this Restated Agreement as provided herein, (the "Term"). After the first Term, this Restated Agreement may be extended for successive five-year periods upon written agreement signed by the Owner and the City.

**ARTICLE 2  
PRELIMINARY AND FINAL PLATS**

**2.01 Generally.** All development applications relating to the Property will comply with the Code of Ordinances and other ordinances not codified of the City of Kyle ("Code") as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the Property has not been annexed by the City.

**2.02 Preliminary Plan.** The Owner may submit to the City an application for a preliminary plan for the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property subject to 3.02 below. Pursuant to Section 41-45 of the City Code, the Owner may request the City, including the City's Zoning and Planning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan.

**2.03 Subdivision Plats.** The Owner may submit to the City an application for a subdivision plat for a portion of the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property subject to 3.02 below. Owner may submit subdivision construction plans concurrently with a subdivision plat application.

**2.04 City Review and Approval.** In anticipation of the voluntary annexation of the Property, the City will not require the Owner to submit any development applications to Hays County for review or approval. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property.

### ARTICLE 3 ANNEXATION

**3.01 Involuntary Annexation.** Except as provided in Section 3.02, the City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes for the term of this Restated Agreement. Except as provided in this Restated Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan during the term of this Restated Agreement.

**3.02 Voluntary Annexation.**

(a) Owner may submit, at any time, a signed petition requesting the annexation of all or a portion of the Property.

(b) If an application for a preliminary plan under 2.02 of this agreement, final plat under 2.03 or any related development permit relating to the Property is filed and such application is not withdrawn by the 180<sup>th</sup> day after the day of the City's acceptance of such application, then Owner's failure to withdraw any such application will constitute and be deemed a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be deemed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

(c) If a preliminary plan, final plat or related development permit relating to the Property is approved by the City, such approval will constitute and be deemed a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be deemed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

(d) If an application for a preliminary plan, final plat or related development permit relating to the Property is filed and such application is withdrawn on or before the 180<sup>th</sup> day after the day of the City's acceptance of such application, then such withdrawn application will not constitute or be deemed a petition for voluntary application.

**3.03 Waiver of Owner's Rights Under § 43.035.** If the City Council begins annexation proceedings pursuant to Section 3.02, the Owner acknowledges and agrees that Section 43.052, Texas Local Government Code, does not apply to the City's annexation of the Property. Further, Owner agrees that voluntary annexation pursuant to Section 3.02 (a), (b) or (c) will constitute Owner's waiver of all rights Owner may have under Section 43.052, Texas Local Government Code.

**3.04 Change in Annexation Law.** No subsequent change in the law regarding annexation shall affect the enforceability of this Restated Agreement or the City's ability to annex the Property pursuant to the terms of this Restated Agreement.

#### **ARTICLE 4 EXISTING USE**

**4.01 Existing Use.** Until a request for voluntary annexation is made in accordance with Section 3.02, Owner covenants and agrees not to use the Property for any use other than for agriculture or wildlife management, except for any now-existing single family residential use of the Property, without the prior written consent of the City. The City will not enforce any planning and development authority and regulations that interfere with the use of the Property for agriculture and wildlife management purposes. Until a request for voluntary annexation is made in accordance with Section 3.02, the Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the City limits, subject to the exceptions set forth herein. The Owner reserves the right to construct, repair, or renovate buildings on the Property that are consistent with its agricultural use without obtaining a building permit or triggering annexation. Further, the Owner may construct an accessory structure to an existing single-family dwelling. Additionally, Owner reserves the right to construct a new residence on the Property, provided that Owner provides written notice of the construction to the City so that the Parties can modify the description of the land subject to this Restated Agreement. This Section 4.01 expires upon the annexation of the Property by the City.

**4.02 Eminent Domain.** The City reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Section 212.172 Texas Local Government Code development agreement.

#### **ARTICLE 5 ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS**

**5.01 Notice to Purchaser.** The Owner shall give written notice of this Restated Agreement to a prospective purchaser or grantee of any portion of the Property prior to such sale or conveyance. The Owner shall give the City written notice of such sale or conveyance; provided, however, this sentence will not apply to a sale or conveyance among the owners of the Property.

**5.02 Assignment of Owner Rights.** The Owner's rights and obligations under this Restated Agreement may be assigned in whole or part, subject to the prior written consent of the City, which shall not be unreasonably withheld, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event the Owner assigns all of its respective rights under this Restated Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective.

**5.03 Agreement Binding on Assigns.** This Restated Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by the Owner, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Restated Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to the Owner or the City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Restated Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**ARTICLE 6  
MISCELLANEOUS**

**6.01 Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to a particular Party, as the case may be, at the address hereinafter stated; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

Any notice mailed to the Owner shall be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**6.02 Multiple Originals.** The Parties may execute this Restated Agreement in one or more duplicate originals, each of equal dignity.

**6.03 Recordation.** This Restated Agreement shall be a covenant running with the Property and a copy of this Restated Agreement will be recorded in the Official Public Records of Hays County, Texas.

**6.04 Governing Law.** This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Restated Agreement shall remain in full force and effect. This Restated Agreement is performable in Hays County, Texas.

**6.05 Termination or Amendment By Agreement.** This Restated Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Owner, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the owner of only the portion of the Property affected by the amendment or termination.

**6.06 Damages; Waiver.** Whether in contract or tort or otherwise, the Owner agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. Damages, if any, will be limited to amounts recoverable under §271.153 of the Texas Local Government Code.

**6.07 Enforcement.** This Restated Agreement may be enforced by the Owner but only as provided under §271.153 of the Texas Local Government Code or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Restated Agreement thereafter.

**6.08 Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

**6.09 No Third Party Beneficiary.** This Restated Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

**6.10 Effective Date.** This Restated Agreement will be effective as of the date upon which all Parties have executed the Restated Agreement.

**6.11 Entire Agreement.** This Restated Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

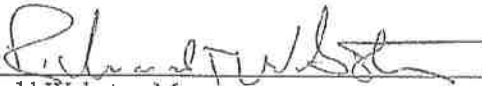
OWNER:

Lehman Family Trust

By: Peggy Jansen

ACKNOWLEDGEMENT

CITY OF KYLE, TEXAS

By:   
R. Todd Webster, Mayor

ATTEST:

  
Amelia Sanchez, City Secretary

**EXHIBIT A  
PRIOR AGREEMENT**

RESOLUTION NO. 688

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH LEHMAN FAMILY LIMITED PARTNERSHIP AND LEHMAN FAMILY TRUST, TEXAS LOCAL GOVERNMENT CODE; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

Whereas, the City of Kyle, Texas (the "City") has initiated several annexations for the purpose of filling gaps and providing for greater continuity within the city limits; and

Whereas, pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, the City has offered to enter a development agreement titled "Development Agreement Under Section 43.035, Texas Local Government Code" (the "Agreement") attached hereto and incorporated herein as Exhibit A, with landowners owning land currently appraised for ad valorem tax purposes as land for agricultural use;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, HAYS COUNTY, TEXAS, THAT:**

**Section 1. Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

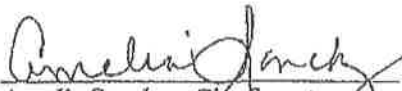
**Section 2. Agreement Approved.** The City Council hereby approves the Development Agreement Under Section 43.035, Texas Local Government Code attached hereto as Exhibit "A", and authorizes the Mayor to execute said Agreement.

**Section 3. Open Meetings.** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

**FINALLY PASSED AND APPROVED on this the 6th day of October, 2009.**

**ATTEST:**

**THE CITY OF KYLE, TEXAS**

  
Amelia Sanchez, City Secretary

  
Miguel González, Mayor



STATE OF TEXAS       §  
COUNTY OF HAYS     §

**DEVELOPMENT AGREEMENT  
UNDER SECTION 45.035, TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement Under Section 45.035, Texas Local Government Code is entered between the City of Kyle, Texas (the "City") and the undersigned property owner(s) (the "Owner") (the "Agreement"). The term Owner shall include all owners of the Property. The City and the Owner are collectively referred to as the Parties.

WHEREAS, the Owner owns a parcel of real property in Hays County, Texas, which is more particularly described in the attached Exhibit "A" (the "Property") that is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Tax Code;

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property;

WHEREAS, under Section 43.035, Texas Local Government Code, the City is required to offer to make a development agreement with the Owner that will provide for the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the area for agriculture, wildlife management, or timber;

WHEREAS, Section 43.035 provides that the restriction or limitation on the City's annexation of all or part of the Property under this Agreement is void if the Owner files any type of subdivision plat or related development document for the Property, regardless of how the area is appraised for ad valorem tax purposes;

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172, Texas Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**Section 1. Extraterritorial Jurisdiction Status of Property.** The City agrees that the Property shall remain in the City's extraterritorial jurisdiction (the "ETJ") and the City shall discontinue the pending annexation proceedings as to the Property. The City further agrees that it shall not annex the Property during the term of this Agreement, subject to the terms and conditions of this Agreement.

**Section 2. Owner's Obligations.** In consideration of the City's agreement not to annex the

Property and as a condition of the Property remaining in the City's ETJ, the Owner covenants and agrees to the following:

- (a) The Owner shall use the Property only for agriculture, wildlife management, and/or timber land use, as defined by Chapter 23 of the Texas Tax Code, that are existing on the Effective Date of this Agreement, except for single-family residential use existing on the Effective Date or as otherwise provided by this Agreement, without the prior written consent of the City. The Owner's use of the property as of the Effective Date includes the following:
  - (1) Raising and selling of livestock, including pigs, hogs, and cattle.
  - (2) The planting, cultivation, harvesting, and destruction of crops, plowing of the land and application of herbicides, insecticides, fertilizers, and other chemical performed by ground rigs, airplanes, and helicopters; and
  - (3) Storage and selling of grains, crops, chemicals, fertilizer, and feed.
- (b) The Owner shall not subdivide the Property, or file for approval of a subdivision plat, site plan, or related development document for the Property with Hays County or the City until the Property is annexed into and zoned by the City, provided that the Property may be subdivided into two parcels that are greater than five acres in size if required by a lender to finance the construction of a new single family home or other building or structure that is authorized to be constructed on the Property under Section 2(c).
- (c) The Owner shall not construct, or allow to be constructed, any building or structure on the Property that requires a building permit until the Property is annexed into and zoned by the City. Accessory structures authorized under the Agricultural District (District "A") (including but not limited to barns, sheds, fences, and corrals) and buildings or structures that are related to and necessary for the use of the Property as authorized under Section 2(a) (excluding new single family residences, except as authorized in this Section 2(c)) are exceptions to this Section 2(c). One additional new single family residence may be constructed on the Property if the residence is to be occupied by family members of the Owner who participate in the ownership or operation of the agricultural, timberland, or wildlife management uses of the Property. Proof of qualification for this exception must be presented at the time of application for a building permit.
- (d) The City's Agricultural District (District "A") zoning regulations shall apply to the Property, and in addition to the uses authorized under District "A", the Property may also be used for wildlife management or timber land, as defined by Chapter 23 of the Texas Tax Code, if such uses existed on the Effective Date of this Agreement. Structures that exist on the Property on the Effective Date shall not be subject to setback requirements. Fences shall not be subject to setback requirements. The City's building codes and regulations shall apply to the Property except as provided otherwise in this Section 2(d). Any buildings or structures constructed on the Property after the Effective Date shall be constructed

in compliance with the regulations for the Agricultural District (District "A") and applicable building codes and regulations, provided that building permits and related inspections shall only be required for the construction of a new single family residence and additions to an existing single family residence that are authorized to be located on the Property under this Agreement. Building permits and related inspections shall not be required for accessory structures related to the existing use of the Property.

**Section 3. Development and Annexation of Property.**

- (a) The following occurrences shall be deemed the Owner's petition for voluntary annexation of the Property, and the Property may subsequently be annexed at the discretion of the City Council:
- (1) The filing of any application for plat approval, site plan approval, building permit (excluding building permit applications for construction of a new single family residence or additions to an existing single family residence authorized to be located on the Property under Section 2), or related development document for the Property, or the commencement of development of the Property, except as specifically authorized herein.
  - (2) The Owner's failure to comply with Sections 2(a), 2(b), or 2(c).
  - (3) The Property is no longer appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Texas Tax Code, or successor statute, unless the Property is no longer appraised for such purposes because the Legislature has abolished agricultural, wildlife management, or timberland exemptions, provided that the Owner is in compliance with Section 2.
  - (4) The filing for voluntary annexation of the Property into the City by the Owner.
  - (5) The expiration of this Agreement.
- (b) The Owner agrees that annexation initiated due to an occurrence under Section 3(a) shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner. Upon annexation, municipal services shall be provided to the Property in accordance with the adopted municipal services plan.

**Section 4. Application of City Regulations.** Pursuant to Section 43.035(b)(1)(B), Texas Local Government Code, the Property is subject to all of the City's regulations, as they are amended from time to time, and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries and the Owner acknowledges and agrees that the City is hereby authorized to enforce said regulations and planning authority except as

specifically provided otherwise herein; provided that fees that are applicable to properties located within the ETJ shall apply to the Property. A City regulation shall be deemed to materially interfere with the use of the Property for agriculture, wildlife management, or timber if the regulation prohibits one of the uses of Property listed in Section 2(a) or a use authorized by Chapter 23, Texas Tax Code; provided that the City may regulate hunting to the extent authorized by Chapter 229, Texas Local Gov't Code. It is the intent of the parties that the enforcement of City regulations during the term of this Agreement does not prevent the Owner from continuing the Owner's agricultural operation under current practices that are compliant with applicable state and federal law or under future practices that occur due to changes in technology, methods, or applicable state or federal law and that are compliant with applicable state and federal law.

**Section 5. Term.** The term of this Agreement (the "Term") is fifteen (15) years from the Effective Date. The Agreement may be extended for two additional fifteen year terms upon the agreement of both parties and approval by the City Council

**Section 6. Vested Rights Claims.** This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code. The Owner hereby waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein. The Owner further waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction the Owner may initiate following the expiration of this Agreement and the institution of annexation proceedings by the City; provided that the City initiates annexation proceedings within one year following the expiration of this Agreement.

**Section 7. Authorization.**

- (a) All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.
- (b) The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect. The failure of each and every owner of the Property to sign this Agreement at the time of approval and execution by the City shall result in the Agreement being void, and the City may, within its discretion, annex the Property in accordance with applicable law.

**Section 8. Notice.** Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

Notices required to be sent to the Owner shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 9. Covenant Running with the Land.** This Agreement shall run with the Property, and this Agreement or a memorandum of this Agreement acceptable to City and the Owner shall be recorded in the Official Public Records of Hays County, Texas. The Owner and the City acknowledge and agree that this Agreement is binding upon the City and the Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement. Conveyance of the Property, or portions thereof, to subsequent owners does not trigger a request for voluntary annexation unless Section 2 is also violated.

**Section 10. Severability.** If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

**Section 11. Amendment and Modifications.** This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

**Section 12. Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

**Section 13. Governmental Immunity; Defenses.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, nor to create any legal rights or claims on behalf of any third party.

**Section 14. Enforcement; Waiver.** This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

**Section 15. Effect of Future Laws.** No subsequent change in the law regarding annexation

shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

**Section 16. Venue and Applicable Law.** Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

**Section 17. Counterparts.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

**Section 18. Effective Date.** This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the parties.

**Section 19. Sections to Survive Termination.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

Entered into this 5<sup>th</sup> day of October, 2009.

Owner (s)

*Harold Lehman*  
Printed Name: Harold Lehman

Printed Name: \_\_\_\_\_

City of Kyle, Texas

*Miguel Gonzalez*  
Miguel Gonzalez, Mayor

STATE OF TEXAS        §

COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Hazel Lehman, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 5<sup>th</sup> day of October, 2009.



Kay S. Kost  
Notary Public - State of Texas

STATE OF TEXAS §  
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared \_\_\_\_\_, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public - State of Texas

STATE OF TEXAS §  
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Miguel Gonzalez, Mayor, City of Kyle, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

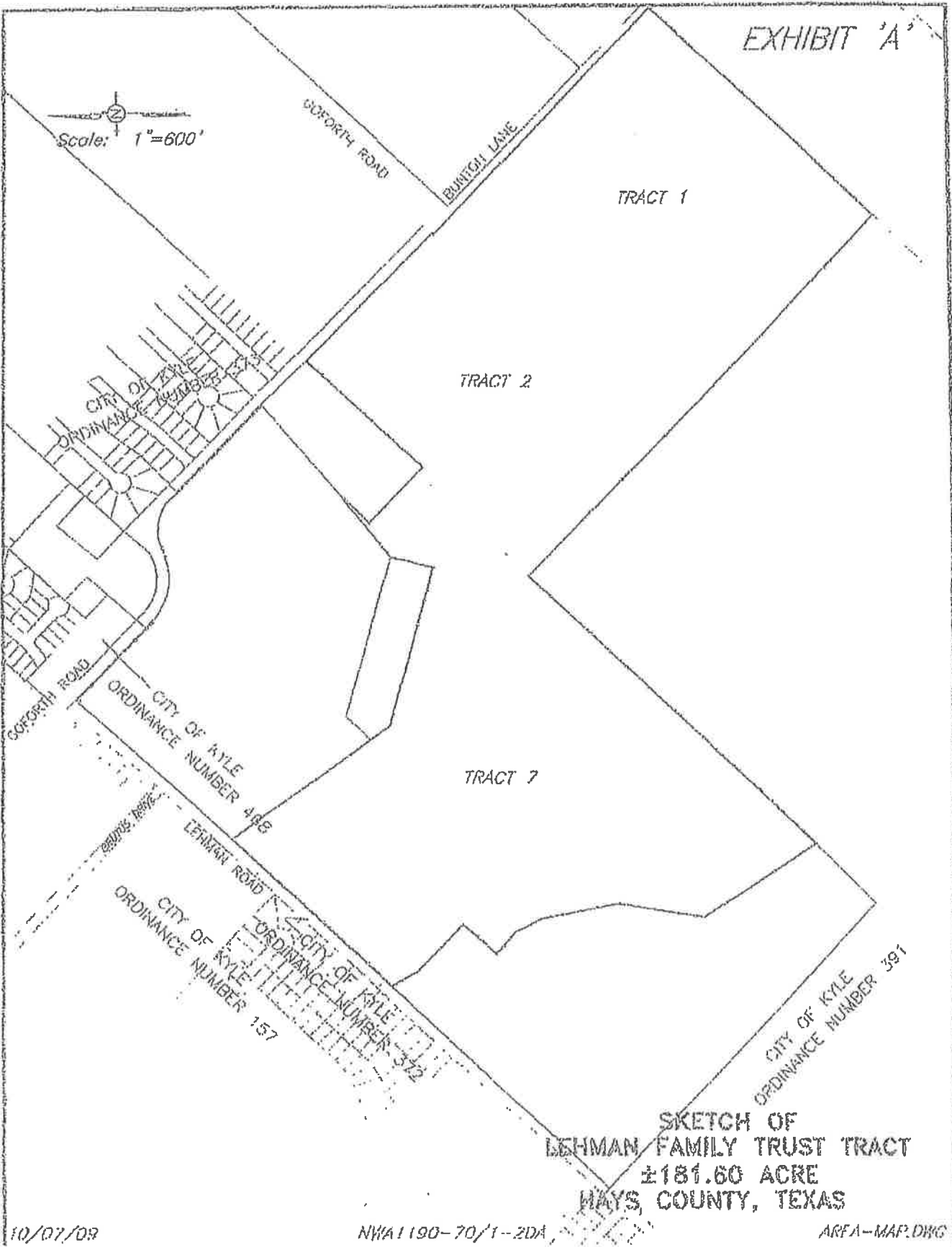
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20<sup>th</sup> day of October, 2009.



Amelia L. Sanchez  
Notary Public - State of Texas

EXHIBIT 'A'

Scale: 1"=600'



SKETCH OF  
LEHMAN FAMILY TRUST TRACT  
±181.60 ACRE  
WAYS, COUNTY, TEXAS



LEHMAN FAMILY TRUST  
DEVELOPMENT AGREEMENT  
CITY OF KYLE, TEXAS

TRACT 1

All that certain tract or parcel of land, called 46.68 acres, conveyed to Hazel M. Lehman, Trustee of the Lehman Family Trust by Will of Theodore H. Lehman, as recorded in Volume 280, Page 213 Official Public Records of Hays County, Texas.

TRACT 2

All that certain tract or parcel of land, called 50.11 acres, conveyed to Hazel M. Lehman, Trustee of the Lehman Family Trust by Will of Theodore H. Lehman, as recorded in Volume 285, Page 171 Official Public Records of Hays County, Texas.

TRACT 7

All that certain tract or parcel of land, called 83.4273 acres, conveyed to Lehman Family Limited Partnership and Lehman Family Trust, Hazel M. Lehman, Trustee, by deed recorded in Volume 3352, Page 175 Official Public Records of Hays County, Texas.

# TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County  
 102 N. LBJ Dr.  
 San Marcos, TX 78666  
 Ph: 512-393-5545 Fax: 512-393-5517



Receipt Number: SM-2009-343211

<b>Payor:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	<b>Owner:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640
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<b>Quick Ref ID:</b> R70300 <b>Owner:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100% <b>Owner Address:</b> HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	<b>Property:</b> 10-0263-0009-00000-2 <b>Legal Description:</b> A0263 JOHN JONES SURVEY, ACRES 84.4273
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Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
<b>2008</b>					
Plum Creek	18,150	0.018000	3.27	3.27	3.27
Hays Consolidated	18,150	1.461300	265.23	265.23	265.23
Special Road Dist	18,150	0.080100	14.54	14.54	14.54
Plum Creek	18,150	0.018000	3.27	3.27	3.27
Hays County	18,150	0.374900	68.05	68.05	68.05
Hays Co ESD #5	18,150	0.085000	15.43	15.43	15.43
<b>Total Payment Amount</b>					<b>369.79</b>
Check Payment Tendered					369.79
Total Tendered					369.79

Date Paid: 01/08/2009  
 Effective Date: 01/08/2009  
 Station: Luanne  
 Cashier: LuanneC

# TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County  
 102 N. LBJ Dr.  
 San Marcos, TX 78666  
 Ph: 512-393-5545 Fax: 512-393-5517



Receipt Number: SM-2009-343213

<b>Payor:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	<b>Owner:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640
---	---

<b>Quick Ref ID:</b> R12500 <b>Owner:</b> HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100% <b>Owner Address:</b> HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	<b>Property:</b> 10-0021-0010-00000-2 <b>Legal Description:</b> A0021 MILTON B ATKINSON SURVEY, ACRES 50.05
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Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
<b>2008</b>					
Plum Creek	10,760	0.018000	1.94	1.94	1.94
Hays Consolidated	10,760	1.481300	157.23	157.23	157.23
Special Road Dist	10,760	0.080100	8.62	8.62	8.62
Plum Creek	10,760	0.018000	1.94	1.94	1.94
Hays County	10,760	0.374900	40.34	40.34	40.34
Hays Co ESD #5	10,760	0.085000	9.15	9.15	9.15
<b>Total Payment Amount</b>					<b>219.22</b>
Check Payment Tendered					219.22
Total Tendered					219.22

**Date Paid:** 01/08/2009  
**Effective Date:** 01/08/2009  
**Station:** Luanne  
**Cashier:** LuanneC

## TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County  
 102 N. LBJ Dr.  
 San Marcos, TX 78666  
 Ph: 512-393-5546 Fax: 512-393-5517



Receipt Number: SM-2009-343214

Payor: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640
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Quick Ref ID: R12599 Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100% Owner Address: HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	Property: 10-0021-0009-00000-2 Legal Description: A0021 MILTON B ATKINSON SURVEY, ACRES 48.68
--	---

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
<b>2008</b>					
Plum Creek	10,470	0.018000	1.88	1.88	1.88
Hays Consolidated	10,470	1.461300	153.00	153.00	153.00
Special Road Dist	10,470	0.080100	8.39	8.39	8.39
Plum Creek	10,470	0.018000	1.88	1.88	1.88
Hays County	10,470	0.374900	39.25	39.25	39.25
Hays Co ESD #5	10,470	0.085000	8.90	8.90	8.90
Total Payment Amount					213.30
Check Payment Tendered					213.30
Total Tendered					213.30

Date Paid: 01/08/2009  
 Effective Date: 01/08/2009  
 Station: Luanne  
 Cashier: LuanneC

## TAX RECEIPT

**HAYS COUNTY TAX OFFICE**  
**Luanne Garaway Tax Assessor-Collector**  
**102 N. LBJ Drive**  
**San Marcos, TX 78666**  
**(512) 393-8545**

This is a receipt for taxes paid as of 11/16/2007 based upon the tax records of the County Tax Office.

Station : dianec	Receipt Number : SM-2007-233926
Cashier : DianeC	Date Paid : 11/16/2007      Effective Date: 11/16/2007
Tax Years : 2007	Tender Method : Check Payment - 1621
Payor : LEHMAN, HAZEL LIPPE	Total Paid : 1,656.53

Payor: LEHMAN, HAZEL LIPPE (O0022441)  
 1000 LEHMAN RD  
 KYLE, TX 78640

Owner: Multiple Owners

### LEGAL DESCRIPTION

### ENTITIES

R11514 : ABS 14 JOHN STUART SURVEY 38.93 AC R12599 : A0021 MILTON B ATKINSON SURVEY, ACRES 48.68 R12600 : A0021 MILTON B ATKINSON SURVEY, ACRES 50.11 R70073 : ABS 14 JOHN STUART SURVEY 20.00 AC R70300 : A0263 JOHN JONES SURVEY, ACRES 111.6263 R70301 : ABS 263 JOHN JONES SURVEY 1.00 AC GEO#90602151	FHA Hays Co ESD #5 SHA Hays Consolidated ISD GHA Hays County PCC Plum Creek Conservation District WPC Plum Creek Groundwater District RSP Special Road Dist
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### PAYMENT SUMMARY

R11514 - LEHMAN, HAZEL LIPPE (O0022441)  
 1000 LEHMAN RD KYLE, TX 78640

10-0014-0078-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	7,880.00	0.077000	6.07	6.07	0.00	0.00	6.07
2007 SHA	7,880.00	1.461300	115.15	115.15	0.00	0.00	115.15
2007 GHA	7,880.00	0.371400	29.26	29.26	0.00	0.00	29.26
2007 PCC	7,880.00	0.017800	1.40	1.40	0.00	0.00	1.40
2007 WPC	7,880.00	0.018000	1.42	1.42	0.00	0.00	1.42
2007 RSP	7,880.00	0.086000	6.78	6.78	0.00	0.00	6.78
<b>Total Payment for Property R11514</b>							<b>160.08</b>

R12599 - LEHMAN, HAZEL LIPPE (O0022441)  
 1000 LEHMAN RD KYLE, TX 78640

10-0021-0009-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	9,850.00	0.077000	7.58	7.58	0.00	0.00	7.58
2007 SHA	9,850.00	1.461300	143.94	143.94	0.00	0.00	143.94
2007 GHA	9,850.00	0.371400	36.59	36.59	0.00	0.00	36.59
2007 PCC	9,850.00	0.017800	1.75	1.75	0.00	0.00	1.75
2007 WPC	9,850.00	0.018000	1.77	1.77	0.00	0.00	1.77
2007 RSP	9,850.00	0.086000	8.47	8.47	0.00	0.00	8.47
<b>Total Payment for Property R12599</b>							<b>200.10</b>

R12600 - LEHMAN, HAZEL LIPPE (O0022441)  
 1000 LEHMAN RD KYLE, TX 78640

10-0021-0010-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	10,140.00	0.077000	7.81	7.81	0.00	0.00	7.81
2007 SHA	10,140.00	1.461300	148.18	148.18	0.00	0.00	148.18
2007 GHA	10,140.00	0.371400	37.66	37.66	0.00	0.00	37.66
2007 PCC	10,140.00	0.017800	1.80	1.80	0.00	0.00	1.80
2007 WPC	10,140.00	0.018000	1.83	1.83	0.00	0.00	1.83
2007 RSP	10,140.00	0.086000	8.72	8.72	0.00	0.00	8.72
<b>Total Payment for Property R12600</b>							<b>206.00</b>

**EXHIBIT C**  
**PLAN VIEW AND STREET SCAPE ILLUSTRATIONS**







KYLE, TEXAS

FEBRUARY 26, 2019

RIALTO

STUDIO

## CASSETTA RANCH

TYPICAL STREET VIEW - 35' LOTS



BROHN  
HOMES



**EXHIBIT D**  
**LETTER FROM CITY REGARDING PARK LAND FEES**



## *Parks and Recreation*

### Memorandum

To: Debbie Guerra, Planning Department Admin  
Leon Barba, City Engineer  
William Atkinson, City Planner  
Steve Clamons, GIS Coordinator  
Harper Wilder, Public Works Director  
Keshav Gnawali, Engineer 1  
Marcus Peterson, Kyle Fire Dept  
Kathy Roecker, Stormwater Management Plan Administrator  
Howard Koontz, Director of Community Development

From: Kerry Urbanowicz, Director of Parks, Recreation & Facilities

Date: April 23, 2018

Re: Casetta Ranch – Preliminary Plan (SUB-18-0037)

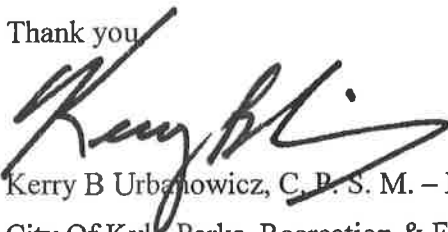
Debbie,

I have reviewed the above-mentioned Concept Plan and have these comments:

1. Park Land Dedication Fees shall be collected at time of Final Plat recording in the amount of \$600/dwelling lot. Also, Park Development Fees shall be collected at time of Final Plat recording in the amount of \$600/dwelling lot. That is a total of \$1,200/dwelling unit for Park Land Fees. It appears that Casetta Ranch has 375 lots, therefore a park land fees check for \$450,000.00, or \$1,200 x 375, is required before plat is recorded. This may be paid in phases as each phase comes for recording of Final Plat.
2. General Note #13 should add this: "Sidewalks, pedestrian crossings and other public amenities that are to be dedicated to the City of Kyle shall meet or exceed all 2010 ADA Standards of Accessibility Design and all current federal and state laws regarding access for people with disabilities for Title II entities."
3. With the recently adopted Stormwater Management Ordinance, we also request that a General Note be added that reads: "Post-construction stormwater control measures shall

have a maintenance plan. The maintenance plan must be filed in the real property records of the county in which the property is located. The owner or operator of any new development or redeveloped site shall develop and implement a maintenance plan addressing maintenance requirements for any structural control measures installed on site. Operation and maintenance performed shall be documented and retained on site, such as at the offices of the owner or operator, and made available for review by the city.”

Thank you

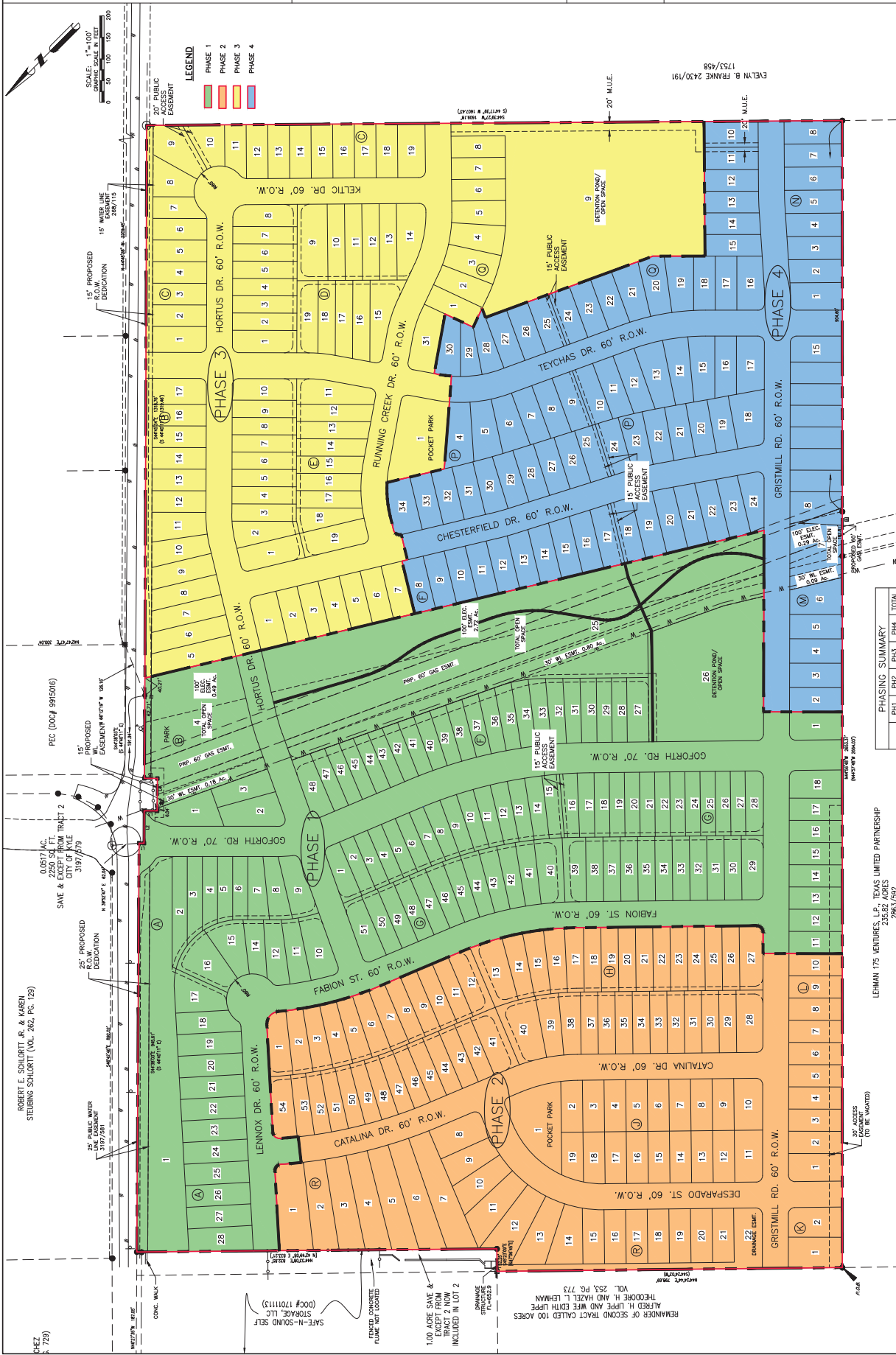
A handwritten signature in black ink, appearing to read "Kerry B Urbanowicz". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kerry B Urbanowicz, C. P. S. M. – Director

City Of Kyle-Parks, Recreation & Facilities Department

**EXHIBIT E**  
**CONCEPT PLAN**

NO.	DATE	REVISIONS



CONCEPT PLAN/ILLUSTRATIVE PLAN ONLY.  
LOT SIZES SUBJECT TO CHANGE AND WILL BE DETERMINED AFTER THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KYLE AND CLAYTON PROPERTIES GROUP, INC. (DBA BROHN HOMES)

PHASING SUMMARY				
PH1	PH2	PH3	PH4	TOTAL
35s	58	0	0	58
40s	29	54	38	121
50s	23	51	48	122
O.S.	2	1	0	3
U.S.	2	0	0	2
POCKET PARK	1	0	1	2
PARK	0	1	0	1
TOTAL LOTS				401

NOTE:  
1. NO FENCES ARE ALLOWED INSIDE PROPOSED 60' GAS BLOCK B, LOTS 2-3, BLOCK F, LOTS 33-46.

REMANINDER OF SECOND TRACT CALLED 100 ACRES THEODORE H. AND WIFE EDITH LEHMAN VOL. 231, PG. 773

CHEZ (729)

ROBERT E. SCHLORT JR. & MAREN STEUBING SCHLORT (VOL. 262, PG. 129)

00577 (IC) 200' EJECT FROM TRACT 2 SAVE & EXCEPT FROM TRACT 2 CITY OF KYLE 3197/879

PEC (0007 8915016)

15' PROPOSED WL. EASEMENT WITH DEDICATION

15' PROPOSED R.O.A. DEDICATION

15' PROPOSED WL. EASEMENT WITH DEDICATION

20' PUBLIC ACCESS EASEMENT

SCALE: 1" = 100' GRAPHIC SCALE IN FEET

LEGEND  
PHASE 1  
PHASE 2  
PHASE 3  
PHASE 4

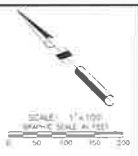
REMANINDER OF SECOND TRACT CALLED 100 ACRES THEODORE H. AND WIFE EDITH LEHMAN VOL. 231, PG. 773

**EXHIBIT F**  
**FENCING PLAN**

7299

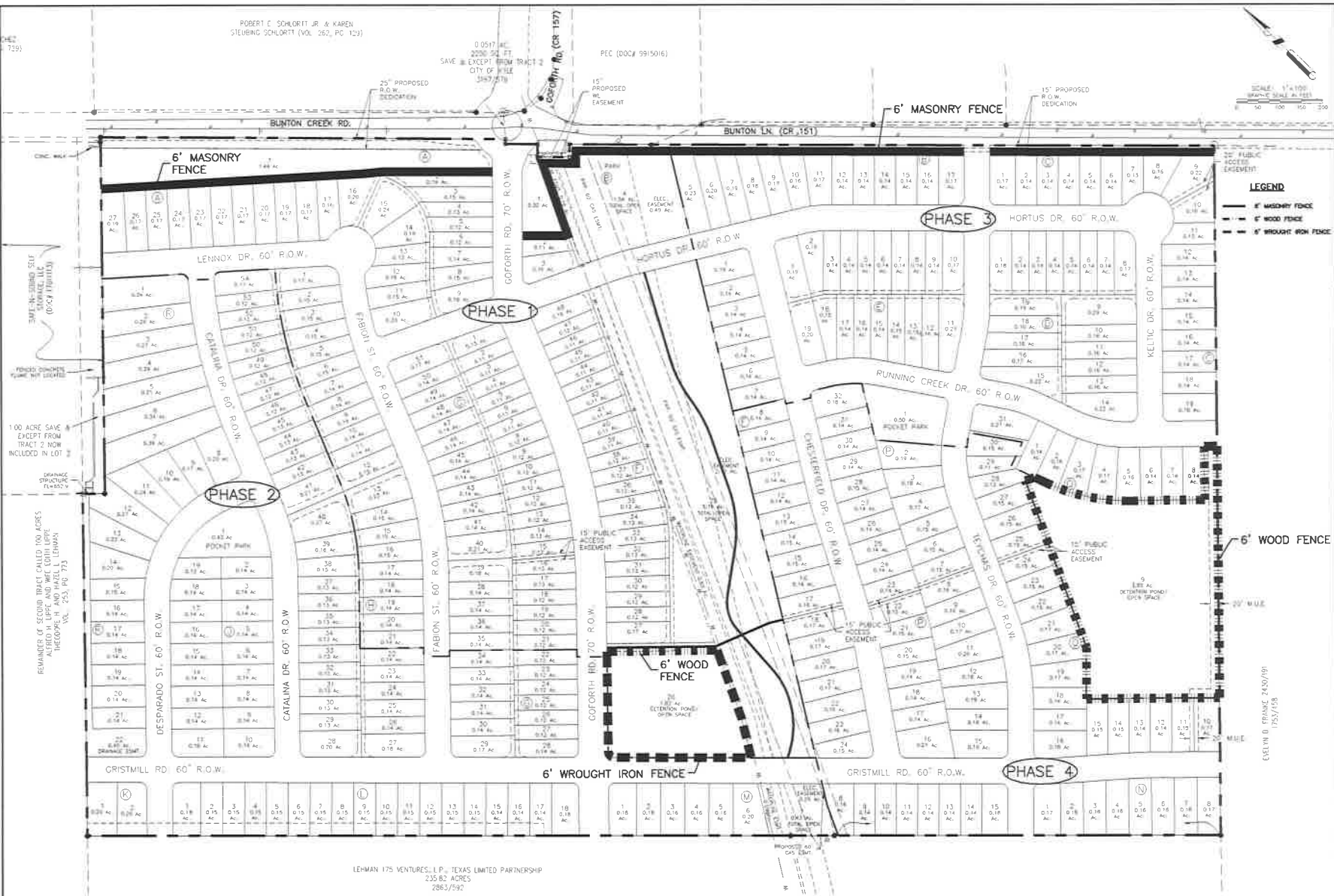
ROBERT C. SCHLUBERT JR. & KAREN STEUBING SCHLUBERT (VOL. 262, PG. 123)

PEC (DOCA 9915016)



**DANNENBAUM**  
ENGINEERING COMPANY - AUSTIN, LLC  
T.B.P.E. FIRM REGISTRATION # F-8895  
DATE EXPIRES: 08/31/2025

THE PROJECT IS SUBJECT TO THE CITY OF KYLE DEVELOPMENT AGREEMENT, 2017, AS AMENDED BY THE CITY OF KYLE, TEXAS, DATED 07/15/2019.



**LEGEND**  
--- 6' MASONRY FENCE  
--- 6' WOOD FENCE  
--- 6' WROUGHT IRON FENCE

CASETTA RANCH  
CONCEPTUAL PLAN  
FENCING EXHIBIT

This document is released under the authority of the City of Kyle, Texas, and is not to be used for construction purposes.  
Date: July 2019

NO.	DATE	REVISIONS

- NOTE:**
- NO FENCES ARE ALLOWED INSIDE PROPOSED 60' GAS LINE EASEMENT AND CBRA WATERLINE EASEMENT AT BLOCK B, LOTS 2-3; BLOCK F, LOTS 33-45.
  - MASONRY FENCE DESIGN TO BE PROVIDED DURING CONSTRUCTION DESIGN.
  - FENCE DESIGN TO CHANGE DURING CONSTRUCTION PHASING.

CONCEPT PLAN/ILLUSTRATIVE PLAN ONLY. LOT SIZES SUBJECT TO CHANGE AND WILL FOLLOW THOSE ALLOWED PER THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KYLE AND CLAYTON PROPERTIES GROUP INC. (DBA BROHN HOMES)

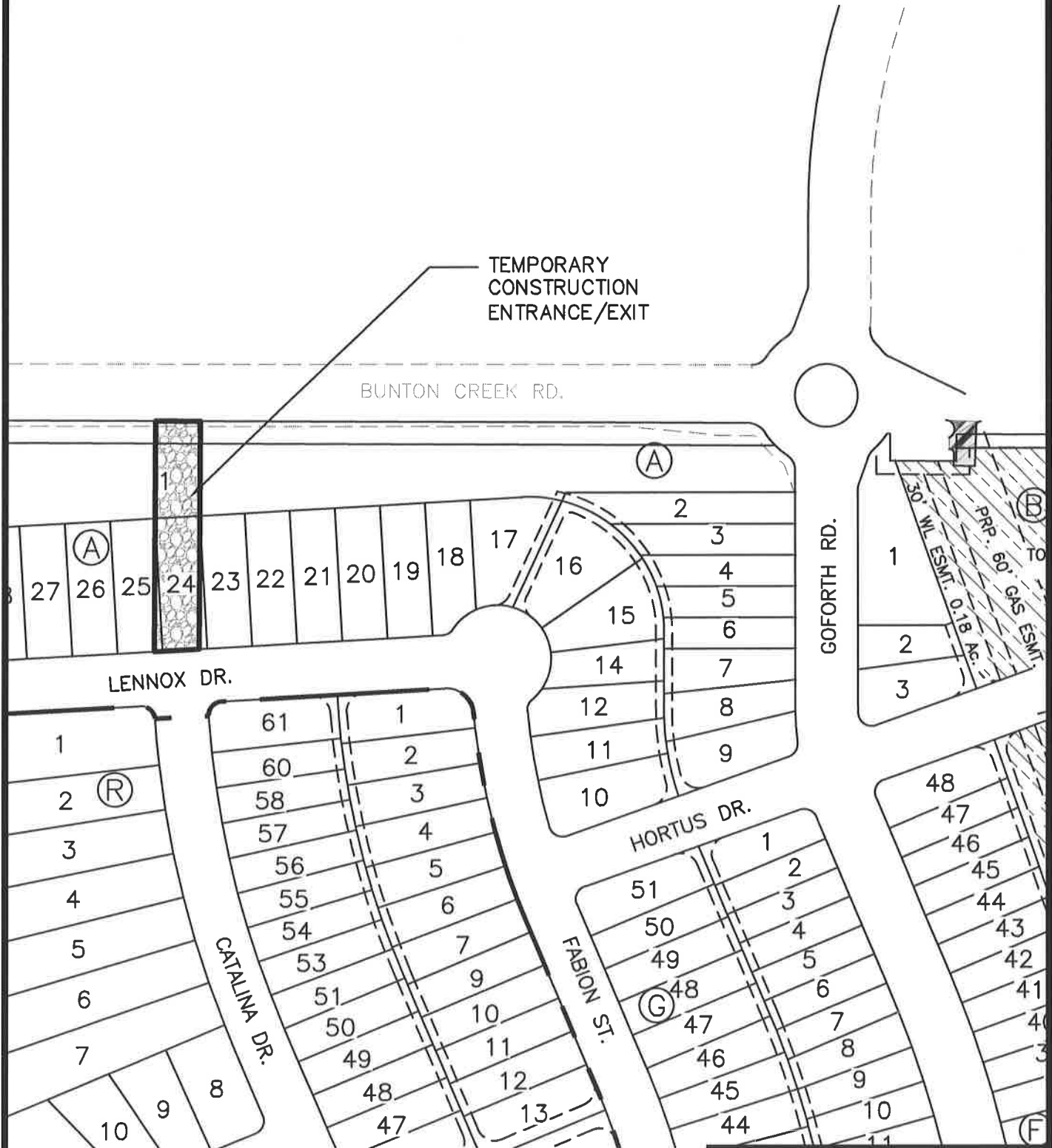
SHEET NO  
**1 OF 1**  
DATE: 08/14/2019  
**5119-01**

**EXHIBIT G**  
**CONSTRUCTION ENTRANCE**



# CONSTRUCTION ENTRANCE EXHIBIT

N.T.S.



05/11/2019 09:01 KYLE P. WOOD MISCELLANEOUS - EXHIBITS 5150-C-CONSTRUCTION ENTRANCE EXHIBIT.DWG DATE: 05/02/2019 11:19:40 AM BY: CRYSTAL BAILEY

PROJECT NO. 5119-01	DRAWN BY: CJB
DATE: 05/31/2019	CHECKED BY: JDH

**DANNENBAUM**  
ENGINEERING COMPANY - AUSTIN, LLC  
T.B.P.E. FIRM REGISTRATION # F-8995  
3409 EXECUTIVE CENTER DR., STE 129 AUSTIN, TX 78731 (512) 345-8505

**EXHIBIT H**  
**PROPOSED TRAFFIC CIRCLE PLAN**





REVISIONS	
NO.	DATE
1	01/19/19
OF	1

This document is prepared for the purpose of information only. It is not to be used for construction, building, or permit purposes. Date: January 2019.

**CASSETTA RANCH**  
PRELIMINARY PLAN

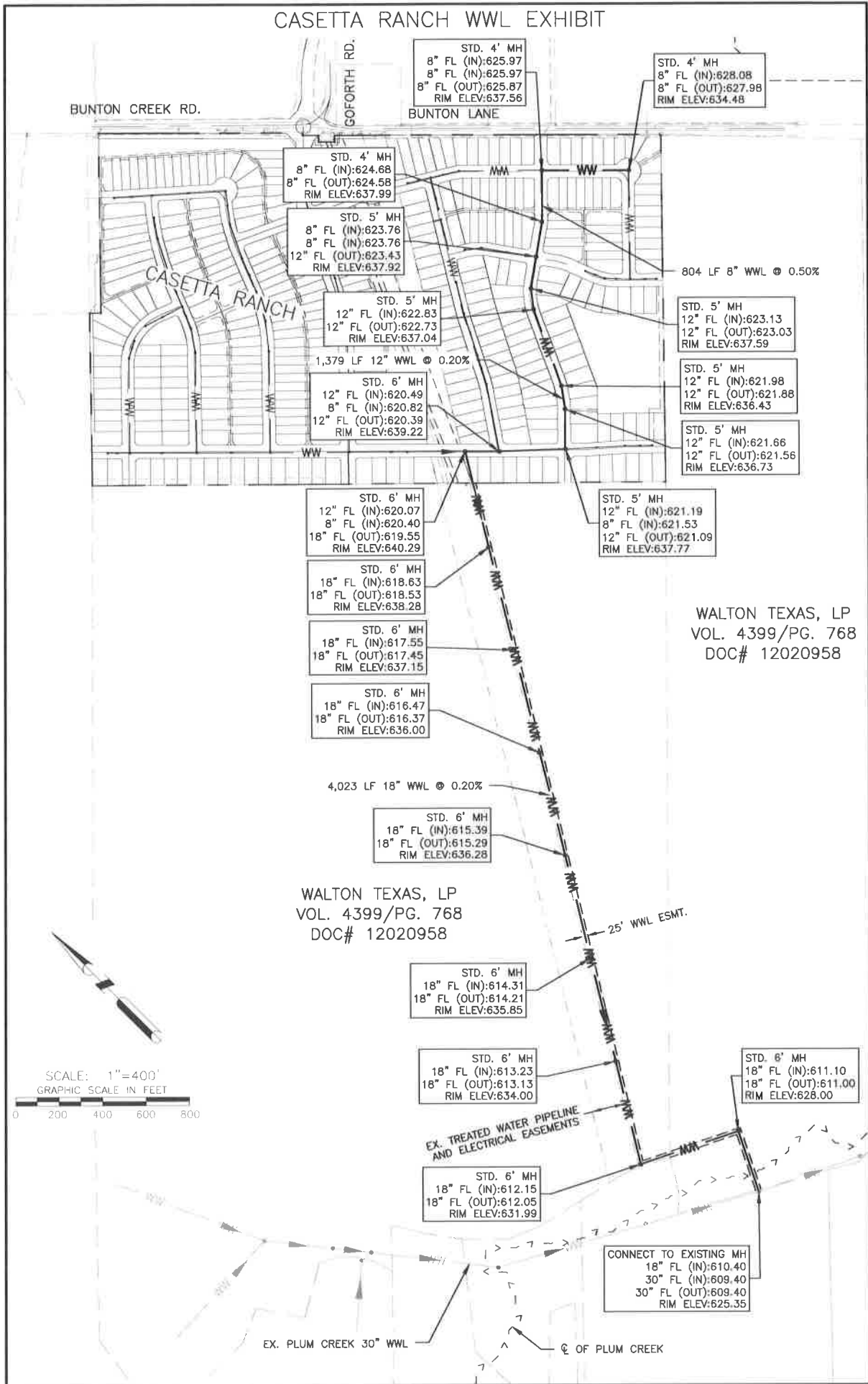
**STREET DIMENSION CONTROL PLAN**

**DANNENBAUM**  
ENGINEERING COMPANY - AUSTIN, LLC  
T.B.P.C. FIRM REGISTRATION # T-8995  
249 EXECUTIVE CENTER DR. STE. 1200 AUSTIN, TX 78721 (512) 343-5505

5119-01

**EXHIBIT I**  
**WALTON LINE**

# CASSETTA RANCH WWL EXHIBIT



BUNTON CREEK RD.

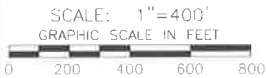
COFORTH RD.

BUNTON LANE

CASSETTA RANCH

WALTON TEXAS, LP  
VOL. 4399/PG. 768  
DOC# 12020958

WALTON TEXAS, LP  
VOL. 4399/PG. 768  
DOC# 12020958



EX. PLUM CREEK 30" WWL

☉ OF PLUM CREEK

## EXHIBIT J

(a) In the event that the City authorizes oversizing of a water line, the Developer shall solicit private bids for the Water Line Project based on the City Engineer-approved design, plans and specifications for the Water Line Project, and recommend the lowest qualified bidder/contractor to the City. The Water Line private bids will be stated or quoted with alternate bids being required for a water line sized to serve the Project as required by the City Code (“**Alternate #1**”) and the size water line required by the City (“**Alternate #2**”), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Water Line Project.

(b) Prior to bidding the Water Line Project, the Developer shall provide the City Engineer and the purchasing agent with a copy of the documents soliciting the bids. Within seven (7) business days, the City Engineer will review the description of the Project for compliance with this Agreement and notify the Project Engineer of any corrections to be made.

(c) After bids are solicited, the Project Engineer will provide the City Engineer and the City’s purchasing agent with copies of the bids. Within ten business days of receipt of the bids, the City Engineer shall evaluate the alternate bids to determine whether the bids are fair and balanced and shall notify the Project Engineer and the purchasing agent that (i) the bids are approved; or (ii) the bids are rejected due to being unbalanced or skewed. If the City Engineer rejects the bids, the Project Engineer shall cause the bids to be corrected and resubmitted to the City Engineer. The City Engineer will review the corrected bids and either approve the bids or reject the bids and seek additional corrections in accordance with the procedures set forth in this subsection (c), or submit the bid to the City Council for approval.

(d) The Reimbursable Costs for the Water Line Project, which shall be:

- (1) the difference between the dollar amount of the approved bid for Water Line Project Alternate #1 and the dollar amount of the approved bid for Water Line Project Alternate #2; and

provided that all such sums and amounts shall have been paid by Developer and are reasonable, necessary and documented to and approved by the City Engineer.

(e) It is estimated that the Reimbursable Costs for the Water Line Project will be less than \$50,000. In the event that the difference between Alternate #2 and Alternate #1 exceeds \$50,000, the Parties shall confer to determine whether (i) the Water Line Project should be rebid; (ii) there is a lawful exception to publicly bidding the Water Line Project; or (iii) the Water Line Project should be bid in accordance with Chapter 252, Texas Local Gov’t Code, and thereafter the Parties shall work in good faith to cause the Water Line Project to be rebid and this Addendum amended, if required.

(f) The City will pay for the Reimbursable Costs of the Water Line Project from any funds available from the City, including but not limited to water impact fees, either in a lump sum payment or through water impact fee reimbursements from customers who connect to the water Line Project. The method of payment for the Reimbursable Costs of the Water Line Project shall be at the City's sole discretion.



## EXHIBIT K

(a) In the event the City does not complete construction of the Bunton Creek Interceptor to the Property and provide wastewater service to the Property therefrom within 6 months of the Effective Date, the City expressly authorizes the construction of the Walton Line and the City required the Walton Line to be oversized above the size required by the City Code, the developer will be reimbursed in accordance with this Agreement. This Exhibit shall govern City cost-participation in the oversizing of the Walton Line or another wastewater line in the Project. The Developer shall solicit private bids for the Wastewater Line Project based on the City Engineer-approved design, plans and specifications for the Wastewater Line Project, and recommend the lowest qualified bidder/contractor to the City. The Wastewater Line private bids will be stated or quoted with alternate bids being required for Wastewater line sized to serve the Project as required by the City Code (“**Alternate #1**”) and a Wastewater line in the size required by the City line (“**Alternate #2**”), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Wastewater Line Project.

(b) Prior to bidding the Wastewater Line Project, the Developer shall provide the City Engineer and the purchasing agent with a copy of the documents soliciting the bids. Within seven (7) business days, the City Engineer will review the description of the Project for compliance with this Agreement and notify the Project Engineer of any corrections to be made.

(c) After bids are solicited, the Project Engineer will provide the City Engineer and the City’s purchasing agent with copies of the bids. Within ten business days of receipt of the bids, the City Engineer shall evaluate the alternate bids to determine whether the bids are fair and balanced and shall notify the Project Engineer and the purchasing agent that (i) the bids are approved; or (ii) the bids are rejected due to being unbalanced or skewed. If the City Engineer rejects the bids, the Project Engineer shall cause the bids to be corrected and resubmitted to the City Engineer. The City Engineer will review the corrected bids and either approve the bids or reject the bids and seek additional corrections in accordance with the procedures set forth in this subsection (c) or submit the bid to the City Council for approval .

(d) The Reimbursable Costs for the Wastewater Line Project, which shall be:

- (1) the difference between the dollar amount of the approved bid for Wastewater Line Project Alternate #1 and the dollar amount of the approved bid for Wastewater Line Project Alternate #2; and

provided that all such sums and amounts shall have been paid by Developer and are reasonable, necessary and documented to and approved by the City Engineer.

(e) It is estimated that the Reimbursable Costs for the Wastewater Line Project will be less than \$50,000. In the event that the difference between Alternate #2 and Alternate #1 exceeds \$50,000, the Parties shall confer to determine whether (i) the Wastewater Line Project should be rebid; (ii) there is a lawful exception to publicly bidding the Wastewater Line Project; or (iii) the Wastewater Line Project should be bid in accordance with Chapter 252, Texas Local Gov’t Code,

and thereafter the Parties shall work in good faith to cause the Wastewater Line Project to be rebid and this Addendum amended, if required.

(f) The City will pay for the Reimbursable Costs of the Wastewater Line Project from any funds available from the City, including but not limited to wastewater impact fees, either in a lump sum payment or through wastewater impact fee reimbursements from customers who connect to the Wastewater Line Project. The method of payment for the Reimbursable Costs of the Wastewater Line Project shall be at the City's sole discretion.

Exhibit "L"

**MUNICIPAL SERVICES PLAN  
FOR PROPERTY TO BE  
ANNEXED TO THE CITY OF KYLE**

**WHEREAS**, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "Property");

**WHEREAS**, *Section 43.056, Loc. Gov't. Code*, requires a municipal service plan be adopted with the annexation ordinance;

**WHEREAS**, the Property is not included in the municipal annexation plan and is exempt from the requirements thereof;

**WHEREAS**, infrastructure provided for herein and that are existing are sufficient to service the Property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

**WHEREAS**, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the Property into the City;

**WHEREAS**, the Property will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan; and

**WHEREAS**, the City of Kyle, a home rule city situated in Hays County, Texas (the "City") and Clayton Properties Group, Inc. d/b/a Brohn Homes ("Developer") on \_\_\_\_\_ entered into that one certain Development Agreement ("Development Agreement") to which reference is made for all purposes;

**NOW, THEREFORE**, the following municipal services will be provided for the Property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to this Plan, the following municipal services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City volunteer fire fighting force and emergency services district with the limitations of water available. Radio response for Emergency Medical Services with the personnel serving the area and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned Agricultural District "A" with the intent to rezone the Property upon request of the landowner(s) or city staff. The Planning & Zoning Commission and the City Council will consider rezoning the Property at future times in response to requests submitted by the landowner(s) or requested by city staff.

(2) **Scheduled Municipal Services.** Depending upon the Property owner's plans and schedule for the development of the Property or redevelopment of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

- (i) In accordance with the Development Agreement.
- (ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site water lines and facilities (the "Water System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Water System, water service will be provided by the City utility department on the same terms, conditions and requirements as are

applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Water System will be accepted and maintained by the City in accordance with its usual policies. Requests for new water extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

B. Wastewater service and maintenance of wastewater service as follows:

- (i) In accordance with the Development Agreement.
- (ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Sewer System will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

- (i) Except as set forth in the Development Agreement, the City will provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:
  - (A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;
  - (B) Routine maintenance as presently performed by the City; and
  - (C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the

Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within, and adjacent to, the boundaries of the Property if dedicated and accepted, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Property abut existing roadways. The Property owner(s) agree that no City improvements are required on such roadways to service the Property except as set forth in the Development Agreement. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances as set forth in the Development Agreement.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of capital improvements shall be initiated after the effective date of the annexation as set forth in the Development Agreement: Water and wastewater facilities that are identified in the Development Agreement, as and when funded pursuant to the Development Agreement. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment, except as set forth in the Development Agreement. No additional capital improvements are necessary at this time to service the Property, except those specifically enumerated in the Development Agreement. The Property owner(s)

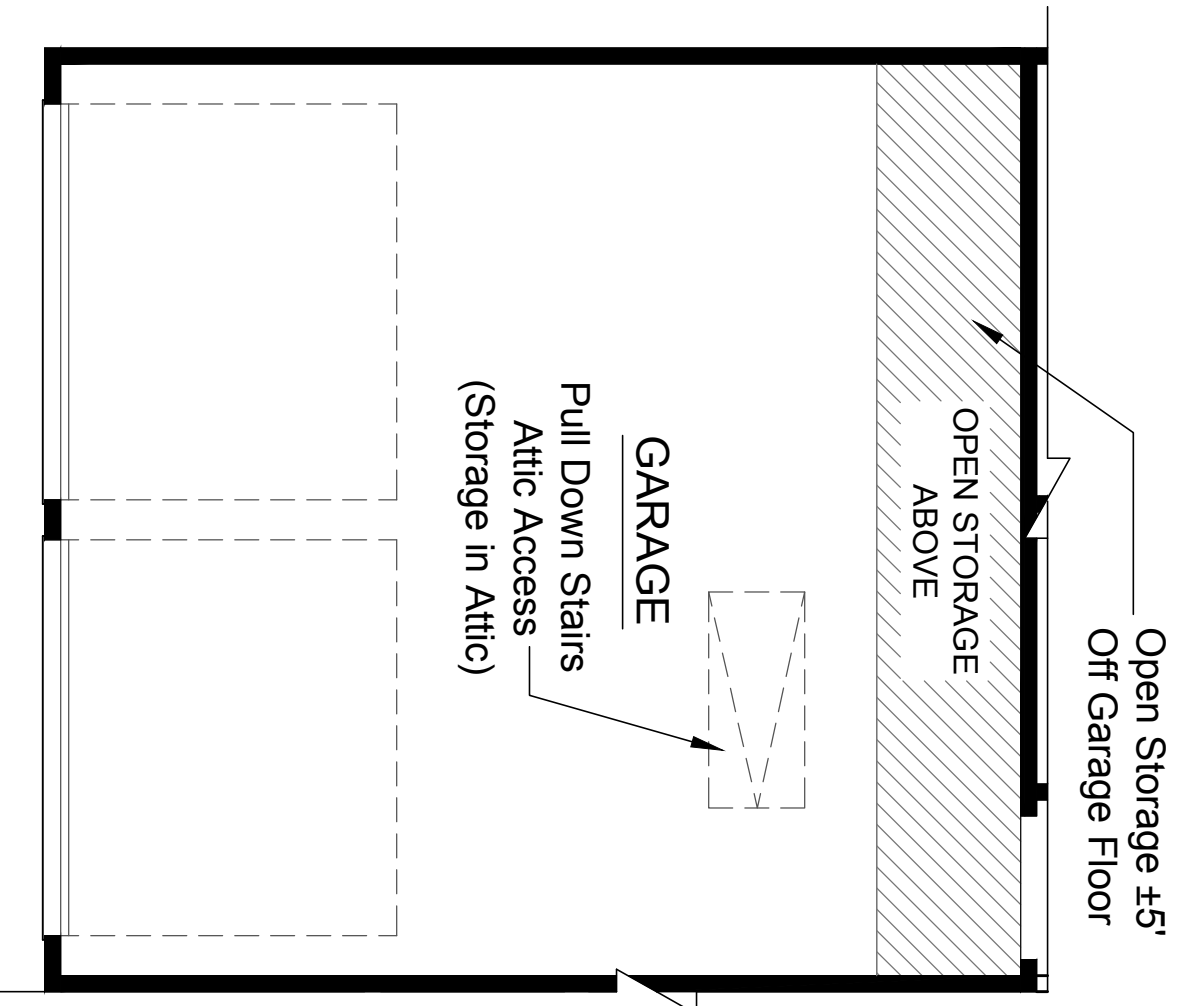
for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property, except as set forth in the Development Agreement, the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired under the term set out in state law, this service plan expires at the expiration of the Development Agreement.

(6) **Property Description.** The legal description and map of the Property are as set forth in Exhibit "A" that is attached to the Development Agreement to which this negotiated municipal service plan is attached as Exhibit "N".

**EXHIBIT M**  
**GARAGE STORAGE**





1 OPEN STORAGE @ GARAGE TYP.  
A

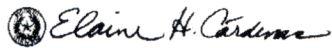
\*Location and Dimensions of Storage and Attic Access May Vary

THE STATE OF TEXAS

COUNTY OF HAYS

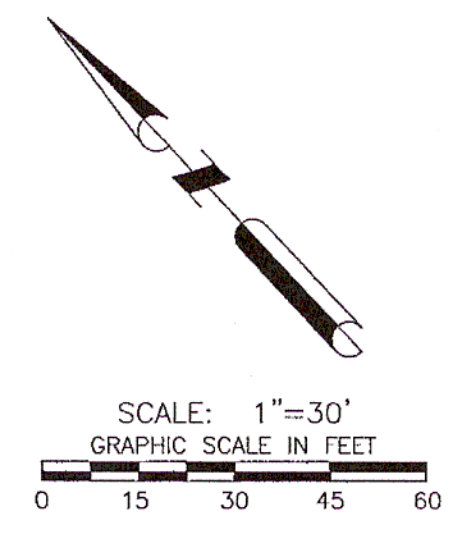
I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

19031785 AGREEMENT  
09/09/2019 03:07:57 PM Total Fees: \$314.00

 Elaine H. Cardenas

Elaine H. Cardenas, MBA, PhD, County Clerk  
Hays County, Texas

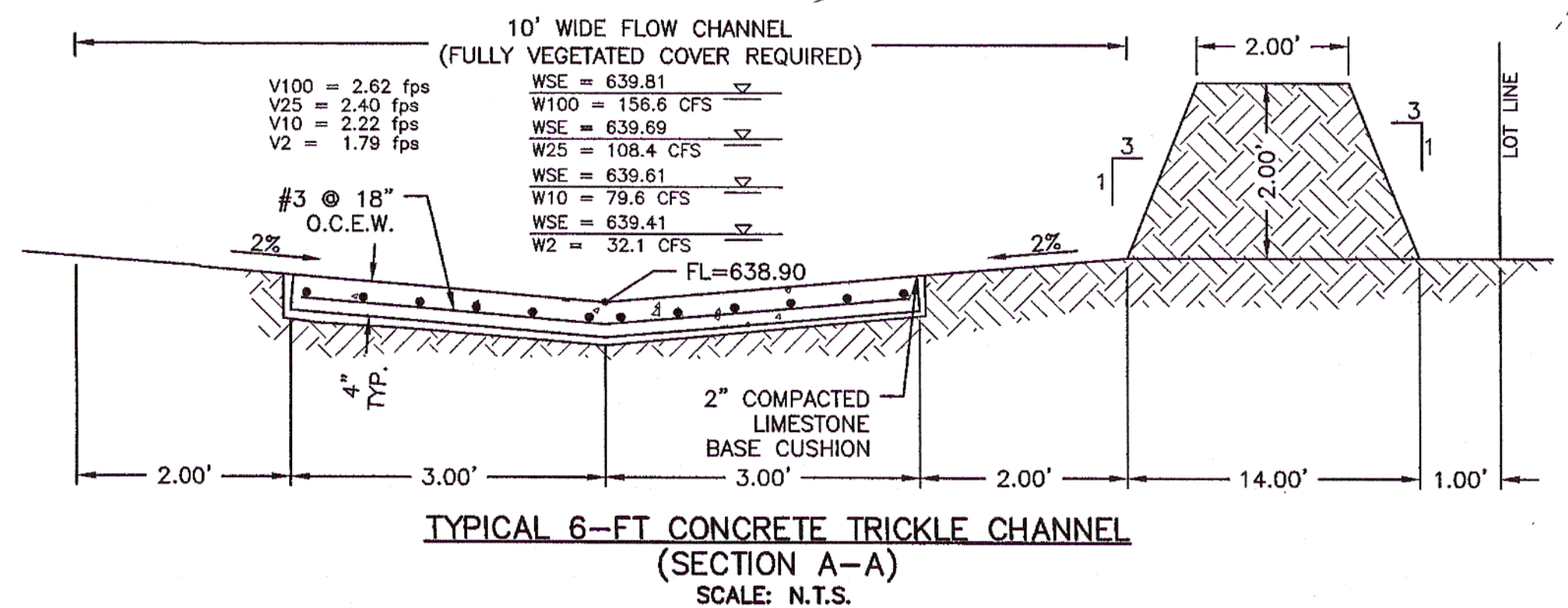
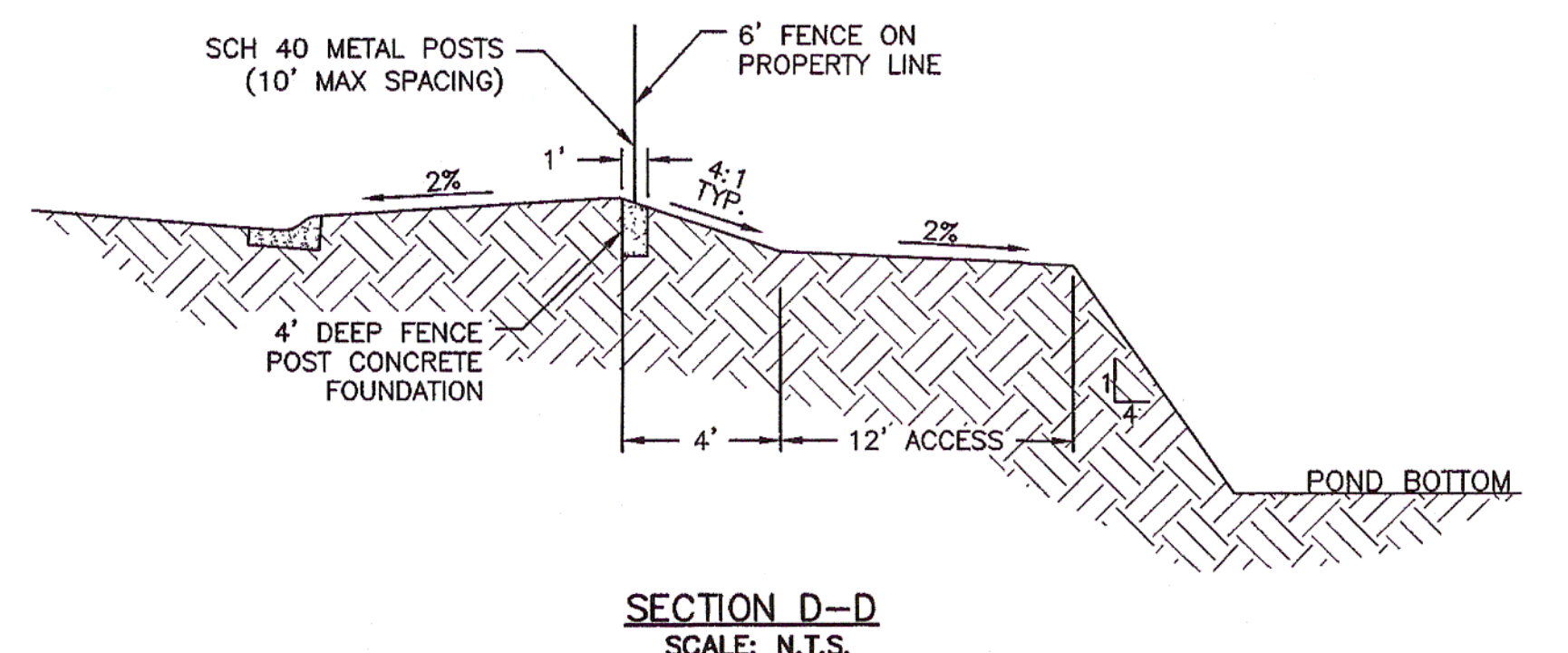
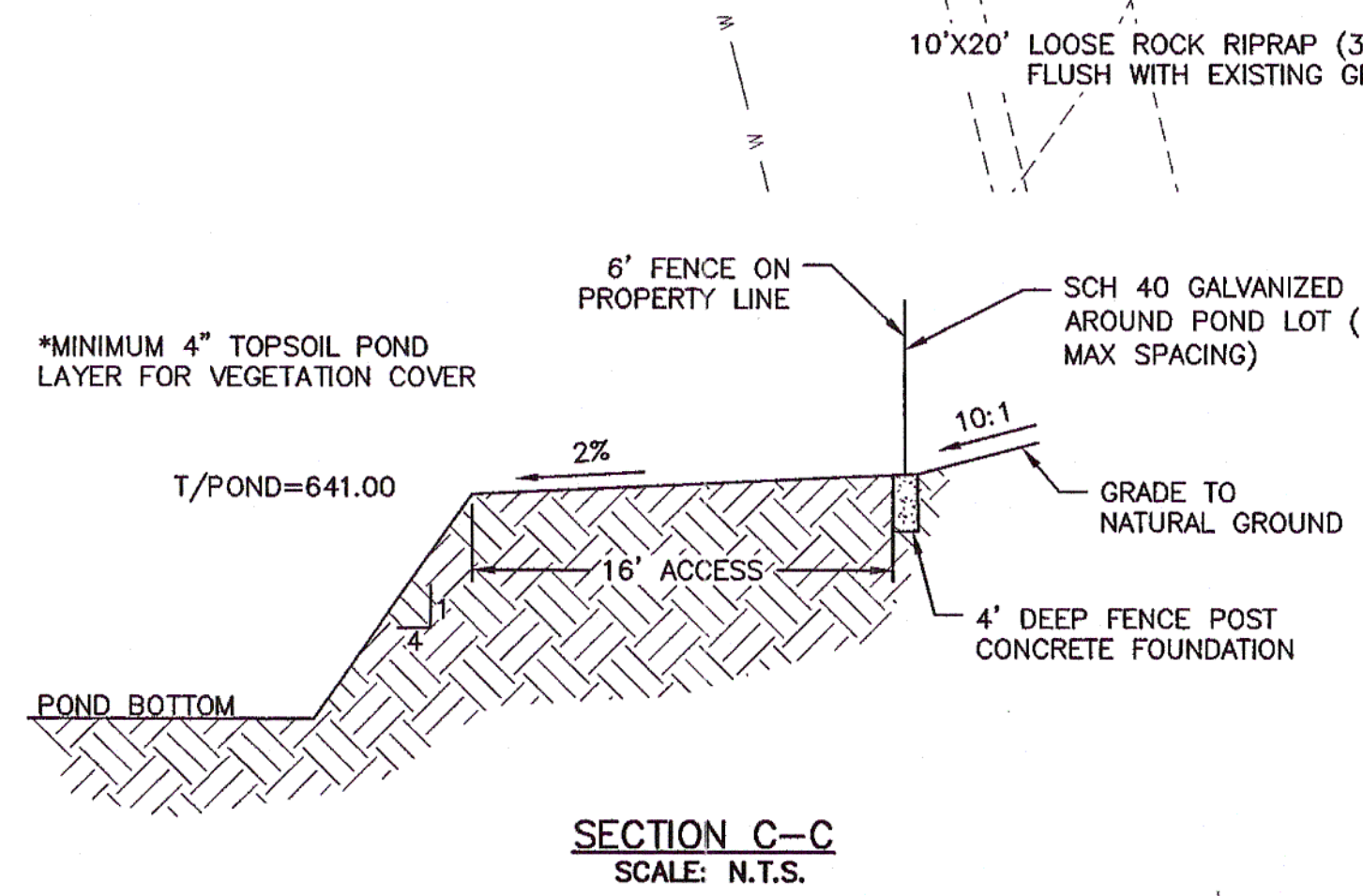
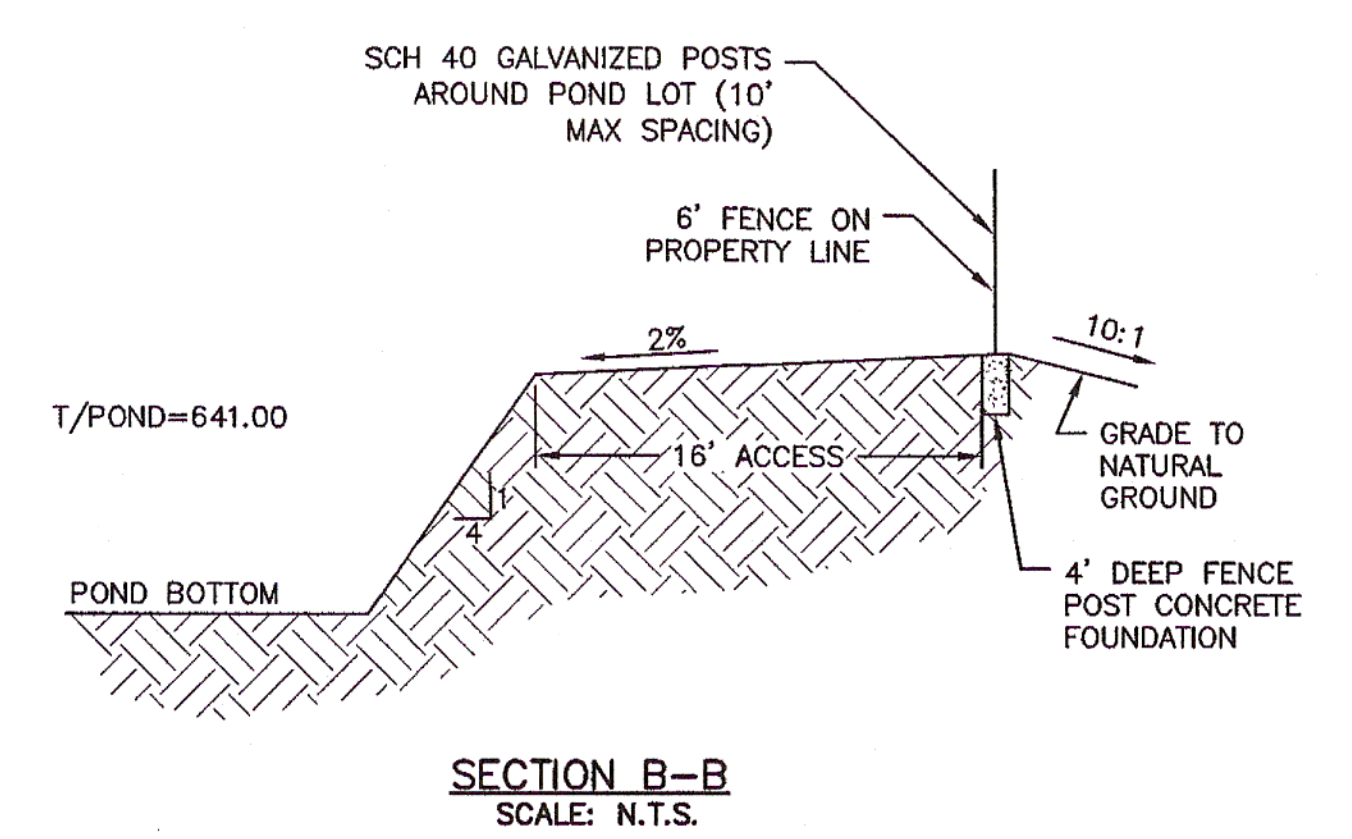
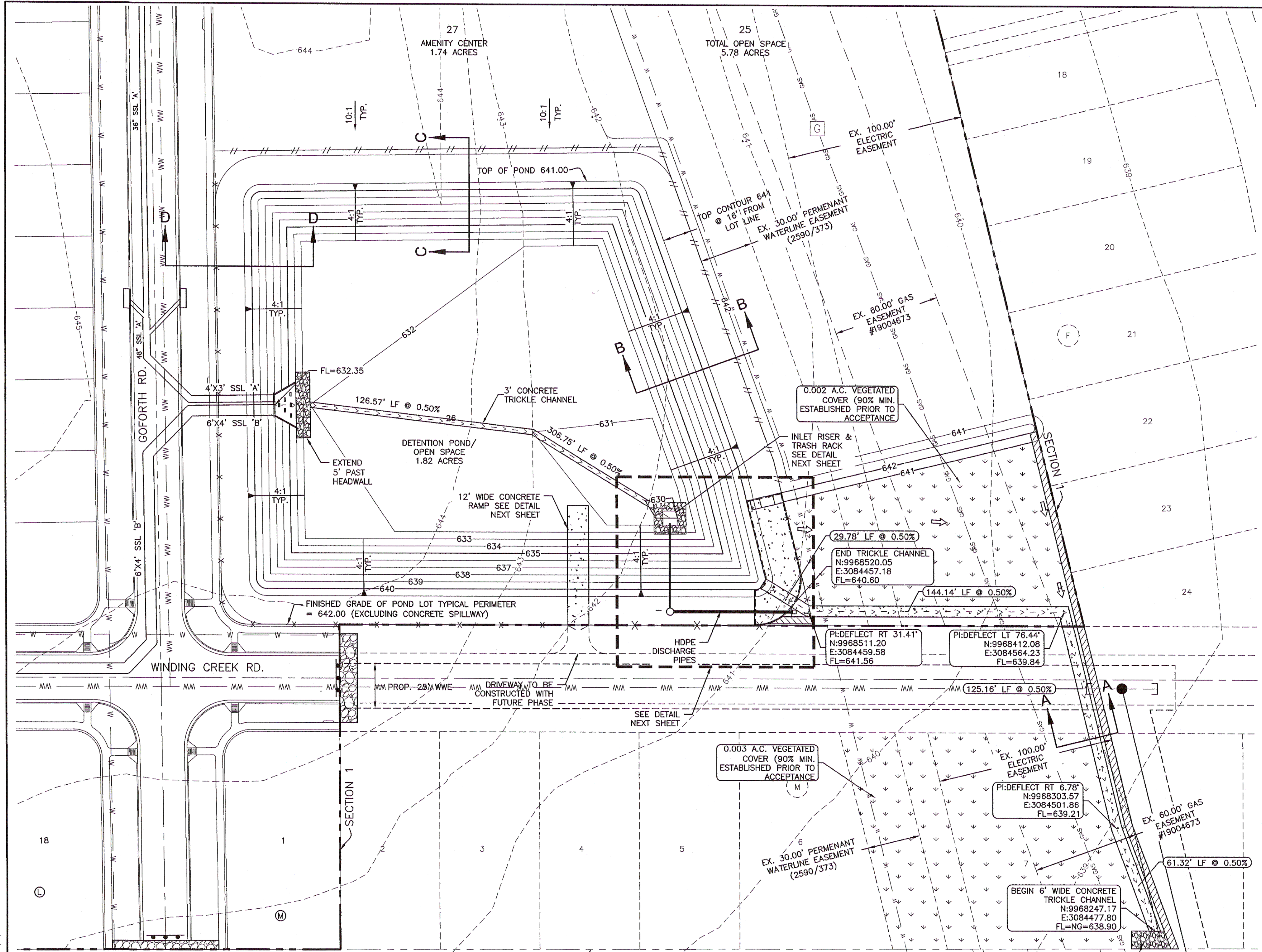




- LEGEND:**
- 641 — PROPOSED GRADE CONTOUR
  - - - 641 - - - EXISTING GRADE CONTOUR
  - /// CEDAR PICKET FENCE
  - x WROUGHT IRON FENCE
  - Rock symbol ROCK RIPRAP
  - Diagonal hatching EARTHEN DIVERSION BERM
  - Grid pattern REINFORCED CONCRETE
- SEE DETAIL SHEET 80 FOR FENCE DETAILS

**STAGE STORAGE TABLE**

ELEV	AREA (sq. ft.)	VOLUME (cu. ft.)	VOLUME (ac. ft.)
630	149.61	0.00	0.00
631	3,329.33	1739.47	0.040
632	23,598.93	15203.60	0.349
633	33,529.51	43767.82	1.005
634	36,559.60	78812.38	1.809
635	39,718.48	116951.42	2.685
636	43,006.13	158313.72	3.634
637	46,422.56	203028.07	4.661
638	49,967.78	251223.24	5.767
639	53,636.87	303025.56	6.957
640	57,408.18	358548.08	8.231
641	61,280.06	417892.20	9.593
642	77,772.74	487418.60	11.190



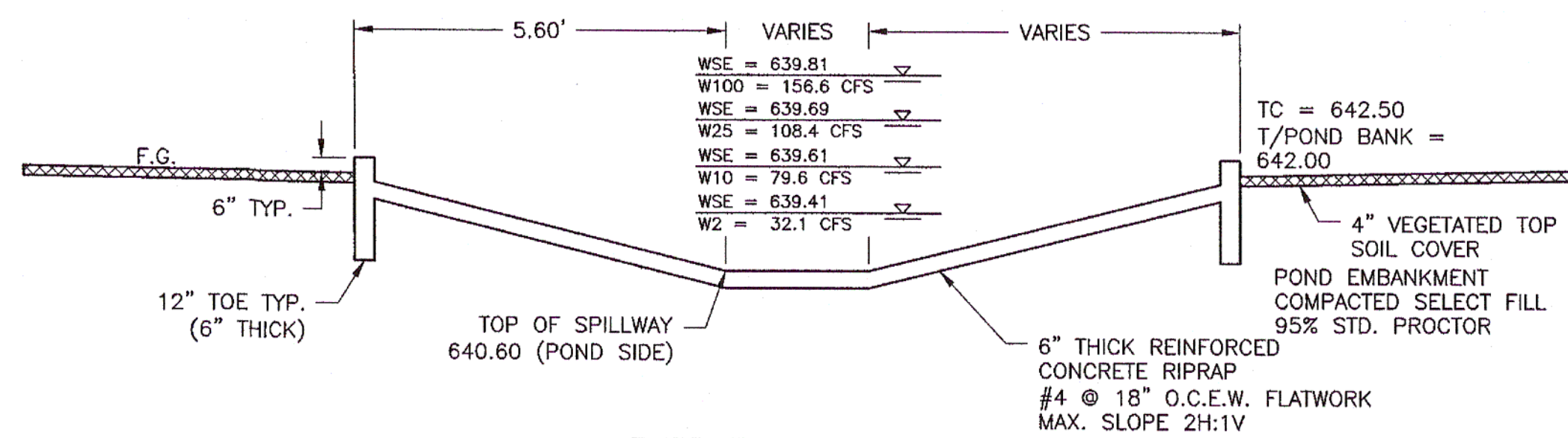
CASSETTA RANCH  
SECTION 1  
WATER, WASTEWATER, STREET AND DRAINAGE IMPROVEMENTS  
DETENTION POND



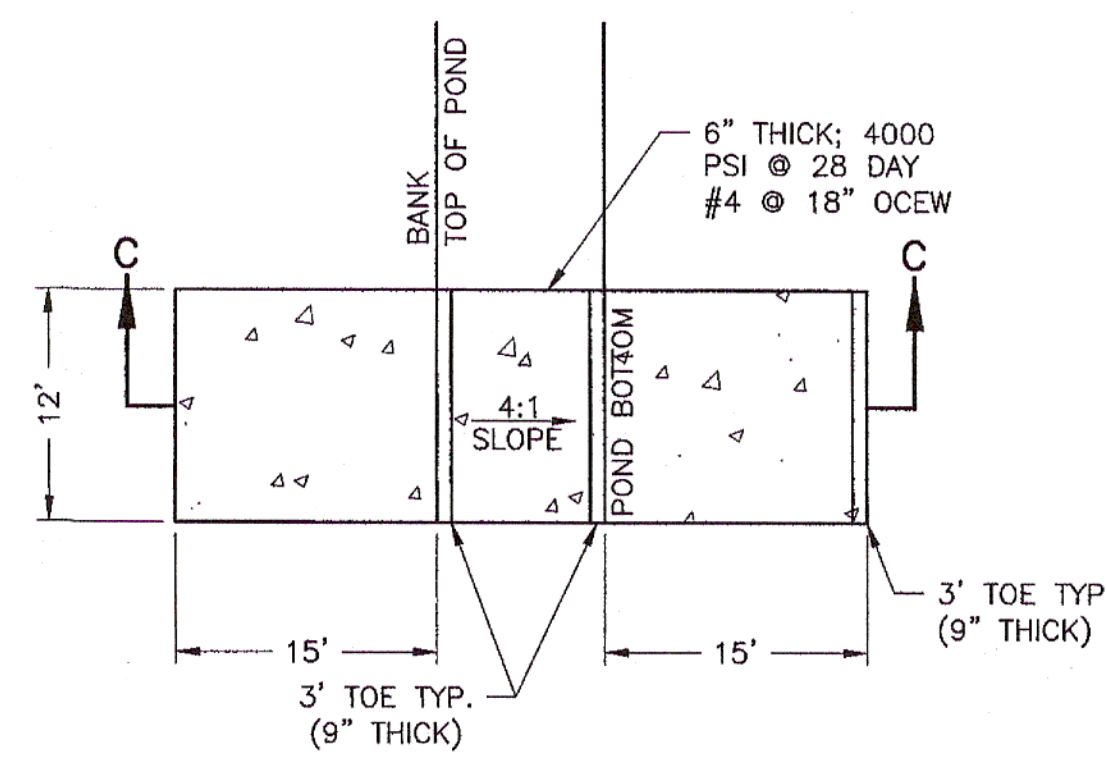
REVISIONS

NO.	DATE	APPROVED

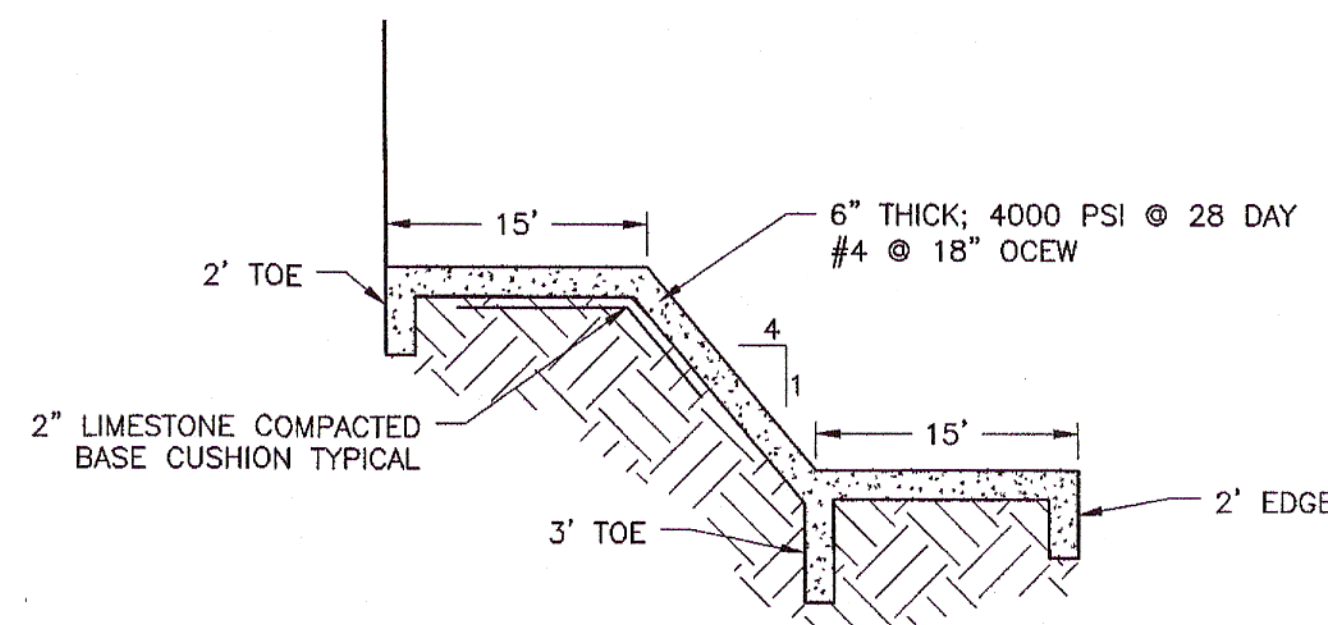




**EMERGENCY SPILLWAY  
(SECTION A-A)  
N.T.S.**



**12' WIDE CONCRETE ACCESS RAMP PLAN  
N.T.S.**

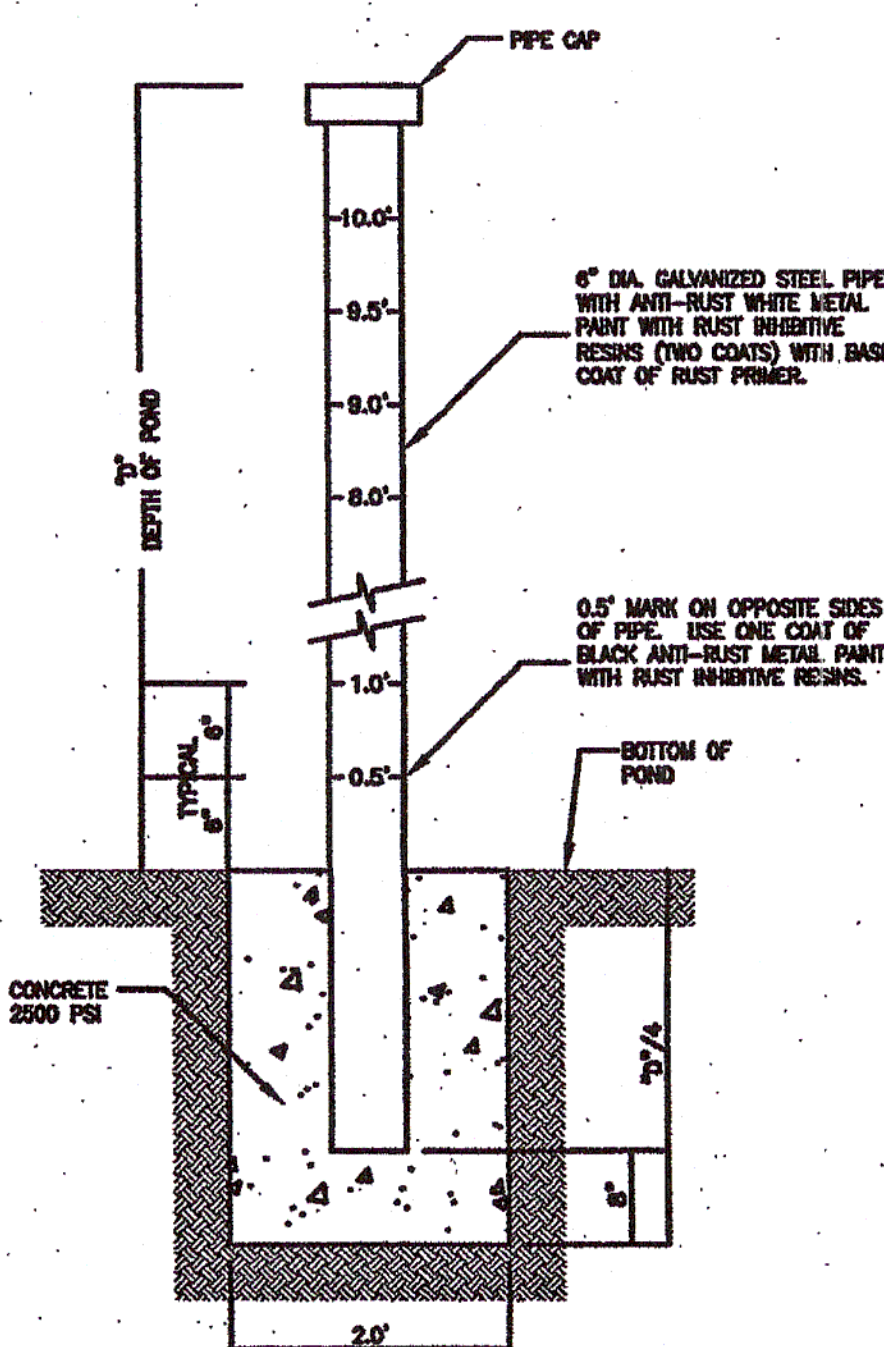
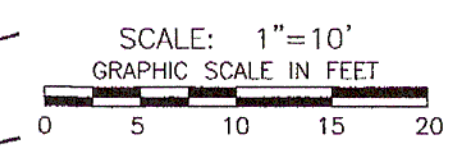
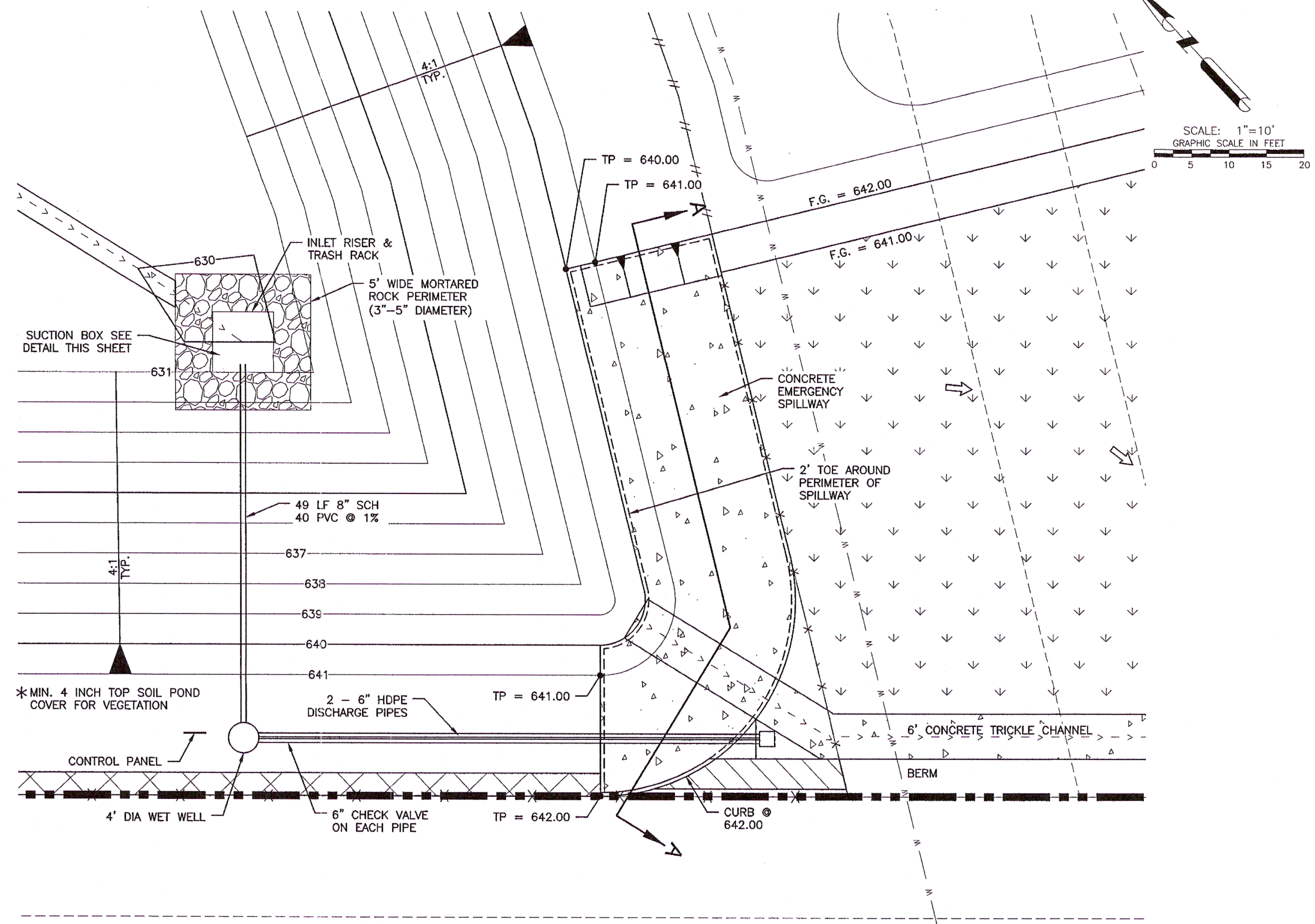


**SECTION C-C  
N.T.S.**

HEC HMS V.3.5 Results:						
	Storm Event	Existing Peak Discharge (cfs)	Developed Peak Discharge (cfs)	Existing Volume (ac-ft)	Developed Volume (ac-ft)	Detention Req'd (ac-ft)
Basin Area 1: 32.88 acres	100 yr	156.6	169.7	20.6	24.3	3.7
West (Sec.1)	25 yr	108.4	122.7	14.0	17.5	3.5
CN=78 Lag=10min	10 yr	79.6	94.5	10.2	13.4	3.2
Ia=0.5" 50% IC Gross	2 yr	32.1	46.9	4.1	6.8	2.7
Basin Area 2: 64.76 acres	100 yr	276.8	322.9	40.5	47.8	7.3
East (Future)	25 yr	190.0	233.0	27.6	34.4	6.8
CN=78 Lag=15min	10 yr	138.4	179.2	20.1	26.5	6.4
Ia=0.5" 50% IC Gross	2 yr	54.2	88.7	8.1	13.3	5.2

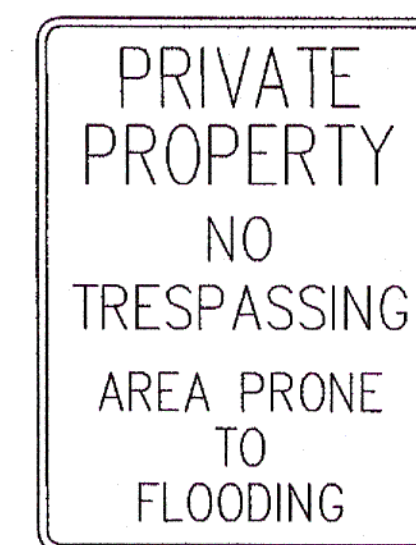
**NOTES:**

- ELEVATIONS SHOWN ARE PROPOSED FINISHED GRADE. REFERENCE GEOTECHNICAL REPORT FOR TOPSOIL, VEGETATION, AND/OR EXCAVATION REQUIREMENTS. ADDITIONAL SOILS MAY BE REQUIRED TO BE REMOVED AND REPLACED WITH SELECT FILL MATERIAL AT CONTRACTOR COST, NO ADDITIONAL EXPENSE SHALL BE ALLOWED.
- ALL FLATWORK WITH SLOPES 0-2%, CONCRETE 3000 PSI @ 28 DAYS. STRUCTURAL, VERTICAL, AND BOX CONCRETE TO BE 4000 PSI @ 28 DAYS.
- THE POND AND OUTFALL STRUCTURE SHALL BE INSTALLED FIRST DURING THE SEQUENCE OF CONSTRUCTION TO ACT AS A TEMPORARY SEDIMENT BASIN. FINAL GRADES TO BE RE-ESTABLISHED WITHIN 30 DAYS OF SUBSTANTIAL COMPLETION/WALK THROUGH. CLASS 1 ESC SOIL BLANKET/MATTING IS TO BE USED FOR PERMANENT REVEGETATION OF POND EMBANKMENTS AND TRICKLE CHANNEL SIDES, BOTH INSIDE AND EXTERIOR SLOPES.
- CONTRACTOR TO PROVIDE GRINDER PUMP SUBMITTALS FOR OUTLET VARMIN SCREEN, SUCTION BOX, ELECTRICAL PLAN, AND RELATED POND APPURTENANCES FOR REVIEW AND APPROVAL BY DESIGN ENGINEER.

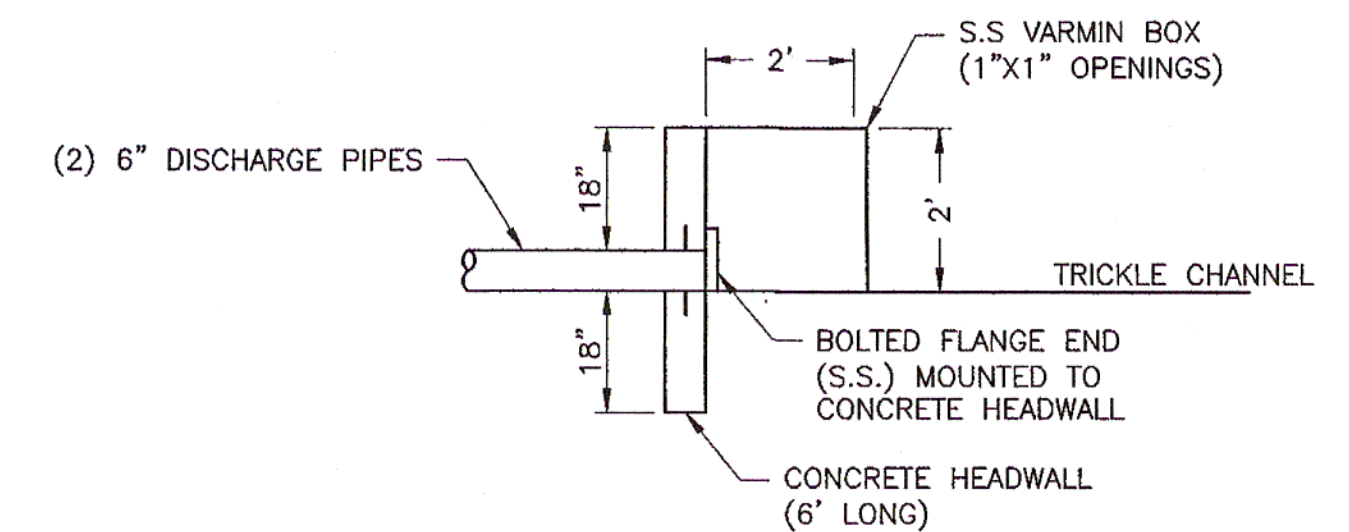


- CONSULT WITH PAINT MANUFACTURER FOR PRODUCTS THAT CAN SUSTAIN LONG PERIODS OF MOISTURE.
- ALTERNATIVES WILL BE ALLOWED WITH THE PRIOR REVIEW AND APPROVAL OF THE PROJECT ENGINEER.

**POND DEPTH MARKER  
N.T.S.**



\* LOCATE 2 PER POND LOT LINE/FENCE (TOTAL OF 8).



**DETAIL D  
N.T.S.**

**CONTROL PANEL NOTES:**

- WET WELL PUMPS AND/OR CONTROL PANEL TO INCLUDE SCADA OR EQUIVALENT AUTOMATED NOTIFICATION SYSTEM. AUTOMATED NOTIFICATIONS SHALL INCLUDE AT A MINIMUM WHEN POWER IS OFF (LOST) AND WHEN PUMP(S) ARE ON. NOTIFICATIONS TO BE TESTED WITH OPERATIONS COMPANY PRIOR TO FINAL WALK THROUGH. CITY INSPECTOR IS TO BE NOTIFIED AND PRESENT AT TESTING.
- BACKUP POWER PLUG-IN AT THE WET WELL AND/OR CONTROL PANEL TO BE PROVIDED IN ORDER TO RUN THE PUMPS DURING A POWER OUTAGE FROM A STANDARD GENERATOR SETUP (110V, 3-PRONG WITH GROUND).
- ANNUAL OPERATIONS AND MAINTENANCE RECORDS OF THE POND MECHANICAL AND ELECTRICAL EQUIPMENT, INCLUDING A SUMMARY TABLE, TO BE PROVIDED TO THE CITY. THE FIRST SUBMISSION SHALL BE AT THE TIME OF FINAL WALK THROUGH. THE HOA SHALL BE RESPONSIBLE AFTER ACCEPTANCE OF THE PROJECT.



REVISIONS

APPROVED

SHEET NO.  
**22 OF 83**

DEC JOB NUMBER  
5119-01



