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- (a) Provide a water supply for municipal, domestic, and commercial use;
- (b) Collect, transport, process, dispose of and control all domestic, industrial or communal wastes;
- (c) Gather, conduct, divert and control local storm water or other local harmful excesses of water in the District;
- (d) Pay organization expenses, operational and engineering expenses during construction, and interest during construction; and
- (e) Provide recreational facilities as authorized by law (but the bonds issued by the District shall not include amounts attributable to the cost of parkland to be dedicated by Developer as provided in Section 5.3 below).

4.4 A copy of any bond application and accompanying regulatory information shall be provided to the City contemporaneously with the filing at the Commission.

ARTICLE V. CONCEPTUAL LAND DEVELOPMENT PLAN, DEVELOPMENT

REQUIREMENTS, AND FEES

5.1 Attached hereto as Exhibit B is the Conceptual Land Development Plan for the Land, which sets out, among other items, the land use categories and general alignment, size, and type of lots, local streets, major roadways, easements, greenbelts, parks, and utility facilities, to the extent such information can be determined at the time this Agreement is executed. By executing this Agreement, the City approves the Conceptual Land Development Plan and the Developer is exempted from applying under, and completing, the Comprehensive Plan process under the City's Subdivision Code. The City hereby approves any variances to the Subdivision Code (including any parkland dedication provisions) necessary to develop the Land in accordance with the Conceptual Land Development Plan; provided, however, that no single family lot shall be less than 6,000 square

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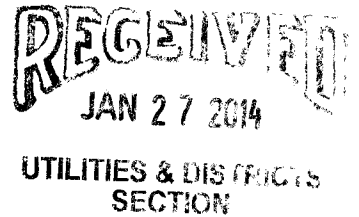
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feet in area. The City expressly approves five foot (5') side setback lines on all single family lots within the Districts.

5.2 The City agrees that it will promptly review Developer's applications and will approve applications that are consistent with the approved Conceptual Land Development Plan; provided, however, that the maximum number of single family residential units on the Land shall not exceed 1500 units. Developer expressly agrees, and the Covenant shall provide, that as to any construction within the Districts, if the construction is of a type which would require approval under the City's Site Development Code (Chapter 155 of the City's Code of Ordinances; the "Site Development Code") or Building Regulations (Chapter 150 of the City's Code of Ordinances; the "Building Code") if such construction was located within the City's limits, that construction shall comply with the Building Code and/or the Site Development Code that are in effect at the time of construction of the applicable structures. If, however, the City granted a variance to the Subdivision Code with respect to the lot upon which such construction occurs, the terms of that variance will be incorporated under the Building Code or the Site Development Code so as to permit construction consistent with the approved subdivision plat.

5.3 Developer shall dedicate land equal to 20% of the total acreage within the Land (excluding Land comprising commercial areas to be withdrawn from the Districts), which dedicated land shall be located within or adjacent to the Land, for use as neighborhood parks, open areas, and school sites. Developer shall use reasonable efforts to coordinate the parkland dedication with the City's park master plan. Land within a flood plain shall receive full credit for purposes of determining acreage under this provision. The dedication of land under this Section shall be as follows:

- (a) All flood plains, both 25 and 100 year, to be credited against the minimum 20% acreage requirement.



(b) 50% credit given for land dedicated to a public school site.

(c) 100% credit for lake areas (wet detention areas).

(d) A reasonably proportionate share of parkland shall be dedicated with each phase or section of the subdivision with the exception that excessive parkland may be dedicated earlier and subsequent phases or sections will provide less than a proportionate share. This can be done only if the cumulative amount dedicated is never reduced below a reasonably proportionate ratio of parkland to developed land.

(e) At the City's request, Developer shall convey to the City and the City shall own, operate, and maintain any park areas. All District residents shall be entitled to use park and open areas conveyed to the City the same as in-City residents.

(f) The District or homeowner associations shall own, operate, and maintain the remaining parkland areas including all floodplain areas and wet detention (lake) areas. The District shall use reasonable efforts to coordinate park facilities and improvements with the City's policies for parkland development and shall confer with the City's Parks Director prior to developing park facilities and improvements.

(g) Dedication shall occur at the time of final plat approval of the land surrounding the park or open areas.

(h) The flood plain may be altered, modified, or shaped to expedite and control floodwaters, construct and maintain utility lines, and to facilitate the use of floodplain as parkland. However, the flood plain may not be altered, modified, or shaped as to reduce the area of the flood plain below 120 acres.

(i) The 100-year floodplain shall be defined as that area calculated by Developer's engineer of record and approved by the Travis County Flood Plain Administrator and the City of Pflugerville's Flood Plain Administrator. The City shall have the right to review and

approve the flood plain study and calculations. Thirty (30) days after submission to the City, Developer's study and calculations shall be deemed approved if the City does not object in writing. Developer's flood plain study and calculations shall be in a form acceptable to FEMA for a letter of map revision.

At the time of final platting of the last parcel of unplatted land within the Land, if Developer has not dedicated the minimum required acreage for use as parks, open areas, and school sites, then Developer shall pay City a cash payment in lieu of dedication of land. The amount of the cash payment shall be equal to the fair market value of the shortage in the number of acres of land required to be dedicated pursuant to this provision but shall not be less than \$15,000 per acre. For an example, assuming 100 acres in the Land, if only 8.5 acres of land have been dedicated for parks and public open areas, and the fair market value of open land in the area of the development is \$10,000 per acre, then Developer shall make a payment of \$15,000, because of the shortage of 1.5 acres. The parties agree that this provision pertaining to parkland dedication completely and totally satisfies all requirements of the City pertaining to parkland dedication including, without limitation, the requirement codified in Section 156.117 entitled "Parkland Dedication" of the Subdivision Code, as same may be amended or modified from time to time.

5.4 Developer agrees that the Subdivision Ordinance of the City (as same may be varied in accordance with Section 5.1 above) shall apply to the platting and development of the Land, but Developer and the Land shall be exempt from all City zoning and annexation requirements such as those imposed by the City's zoning ordinance, and Sections 156.022, 156.214(G), 156.215(E), 156.217(F) and 156.218(F) of the Subdivision Code. Fees shall be assessed and paid in accordance with the Subdivision Code. A City building permit shall be required for any structure constructed on a platted lot within the Land.

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5.5 In accordance with Sec. 212.172 of the Texas Local Government Code, Developer agrees to record the Covenant in the Real Property Records of Travis County, Texas. As noted above, the Covenant will provide for the application of the Building Code and Subdivision Code as specified above, and will allow the City to enforce the development of the Land (including the uses thereof) in accordance with the Conceptual Land Development Plan (as amended from time to time) and the provisions of this Agreement.

The City shall file and maintain in the City's records the Conceptual Land Development Plan, and all modifications and amendments thereto. The City will approve a plat that is consistent with the Conceptual Land Development Plan for the tract that is the subject of the plat provided that the plat satisfies all applicable requirements of the Subdivision Code (as modified herein) and this Agreement. The City is not required to approve a plat that is inconsistent with the Conceptual Land Development Plan for the tract that is the subject of the plat; provided, however, should the City approve a plat that is inconsistent with the then current Conceptual Land Development Plan, such approval shall constitute an amendment to the Conceptual Land Development Plan without the necessity of any further writing or agreement. The City's approval of a plat shall constitute the City's acknowledgment that such tract complies with the applicable Conceptual Land Development Plan and the requirements of the Covenant.

#### ARTICLE VI. WATER, WASTEWATER, AND DRAINAGE FACILITIES

6.1 It is anticipated that the Water System, the Collection System, and the NPWIS will provide at least 1,700 LUE's of wastewater service to (but shall not be obligated to provide more than 2,200 LUE's of wastewater service within) the KM Property (as such terms are defined in the Construction Agreement).

6.2 Developer will construct and own the Water System, the Collection System, and the Drainage System within the Land (except that to the extent of over-sizing of water and wastewater

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system components, the City shall own an undivided interest in the excess capacity from such oversizing of components paid for by the City). It is anticipated that as Developer receives payments of reimbursement from the District from time to time, Developer will convey to the District ownership of the portions of such systems and facilities to which the reimbursement(s) apply, and the District thereafter shall operate and maintain such portions of the systems and facilities. The City understands that Developer may secure a wholesale contract with Manville Water Supply Corporation for water service. This contract will be assigned, in part, to each of the Districts according to the needs of the Districts, and each of the Districts will provide retail water service in the Districts. The District also shall reimburse the Developer for any impact or capital recovery fees paid by the Developer for water, wastewater or drainage service to the Land. The District agrees to terminate water service to enforce payment of the City's sewer bill and to cooperate with the City in billing customers for water, wastewater and solid waste services. The District will contract for the City to provide retail solid waste collection services in the District.

6.3 At the request of the City, Developer shall oversize designated water distribution and wastewater lines or equipment that are a part of the Water System and the Collection System. If the City determines that a component of the Water System or the Collection System, or both, are to be oversized, the City shall notify Developer in writing no later than thirty (30) days after the City received the construction plans from Developer for review and approval and such notice shall include the exact specifications of such oversizing. The oversize cost shall be determined on an incremental, rather than prorata, basis by a bid from Developer's contractor or as otherwise agreed by Developer and the City. If the oversize cost of such component exceeds the amount of money that may be obligated at the discretion of the City Manager, the City will arrange for the necessary funds in the amount of the oversize cost. During the course of the project, Developer will send the City notice of payments made to contractors and suppliers, and

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the City hereby agrees to reimburse Developer within twenty (20) days after the effective date of the notice (see Section 12.2) for the City's share of the payments to contractors and suppliers, up to the oversize cost, for the cost of oversizing.

6.4 All plans and specifications for the Water, Collection, and Drainage Systems or any part thereof shall be designed for compliance with all federal, state and local laws, rules and regulations applicable to such systems and subject to written approval by the City Engineer prior to initiation of construction. City Inspectors shall receive timely advance notice of the right to inspect the construction of the Water, Collection, and Drainage Systems to assure compliance with City standards and the construction plans approved by the City Engineer. Developer shall make reasonable accommodations to the City Engineer's schedule. Neither Developer nor the District shall provide permanent water or wastewater service to any properties to be served by particular water supply and wastewater collection facilities until a City Inspector has approved the construction of same. Developer will provide the City, upon completion of construction, (i) record drawings acceptable to the City Engineer, and (ii) a certification from a civil engineer licensed to practice engineering in Texas, to the effect that the Water System and/or the Collection System, or part thereof, covered by the drawings and specifications were built in accordance with the drawings and specifications as approved and as indicated in the record drawings and are in compliance with applicable federal, state, City and other local laws, rules and regulations. Developer will likewise obtain approval for and supply the City with record drawings and similar certifications for any subsequent additions, alterations, or modifications made to the Water System and/or the Collection System during the term of this Agreement. Developer agrees to pay the fee established by the City to compensate the City for the City Engineer's review of plans and specifications requiring approval and the cost of physical inspection of facilities. Such fees shall not exceed the charges imposed within the corporate limits of the City for similarly situated projects of similar scope and size.

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6.5 All individual water and wastewater service connections to the Water System and the Collection System shall be made in compliance with City standards. City Inspectors shall receive timely advance notice of the right to inspect the individual connections after they have been made and before they are covered in the ground to assure compliance with the City's standards. Developer shall make reasonable accommodations to the City Engineer's schedule. City Inspectors may require the party making the connection to reconstruct or correct, as appropriate, any connections that are not constructed in substantial compliance with the City's standards. Neither Developer nor the District shall provide permanent water and wastewater service to any property until the individual water and wastewater service connections have been inspected and approved by a City Inspector; provided, however, the parties hereto agree that Developer may have water available on an interim basis for development of the Land. This includes water for such construction activities as roads, erosion control, pressure testing, fire protection, drinking water, cleaning, sanitation, and the like, as well as water available to individual dwellings which will be under construction. The City Inspector who inspects and approves an individual water and/or wastewater service connection or both shall furnish Developer and the District with a certificate of approval to satisfy the certification requirements of the State of Texas.

6.6 Developer shall provide to the District adequate title to property on which lift stations and similar facilities are constructed, easements upon which force mains and transmission lines are constructed for the Water System, the Collection System, the Drainage System, and the NPWIS, and access and other easements as reasonably necessary for the City and the District to provide the necessary water, wastewater, and drainage services to the Land.

6.7 By contract (the "Professional Services Agreement"), the City shall operate, repair, maintain and manage the facilities and equipment necessary to (1) transport, deliver and distribute the water furnished to residents of the District and (2) collect and transport the

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wastewater generated inside the District. The management function shall include responsibility for billing and collecting all fees for water and wastewater utility service on behalf of the District. This operation, repair, maintenance and management shall be of a quality and on a frequency as the City provides these services to other City water and wastewater customers. Costs associated with such operation, repair, maintenance, and management of the Water System, the Collection System, and the NPWIS by the City shall be satisfied from and be deemed to be equal to the amount of revenue the City collects from the water and wastewater customers within the District, excluding any amounts collected by the City on behalf of the District. The Professional Services Agreement shall at a minimum contain the provisions set out herein in Exhibit D.

6.8 Rates for water and wastewater service within the Development shall be set by the District to recover the costs of operating the District, operating and maintaining the District's facilities and the District's share of the NPWIS, obtaining wholesale water and wastewater service, and fairly compensating the City for services provided under the Professional Services Agreement. No additional charges, fees or the like shall be assessed against Developer or the District for such services. The City agrees that the Professional Services Agreement will compensate the City for the costs associated with the operation, maintenance, repair, or replacement of components of the Water System, the Collection System, and the District's share of the NPWIS through the water and wastewater rates charged to the District's individual customers and no additional charges, fees or the like will be assessed against Developer or the District for such services. Developer shall pay capacity fees due under any wholesale contracts to which it is a party directly to the wholesale supplier. All other fees and amounts due under the wholesale water and wastewater contracts shall be paid by the City directly to the wholesale supplier other than the City.

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6.9 Pursuant to the City's obligations under the Professional Services Agreement to manage the Water System, the Collection System, and the NPWIS, the City shall read the meter and render a bill for each individual customer on a basis similar to that followed for in-City customers. Developer and the District agree that the City can terminate water service, wastewater service, or both services to a customer upon the same basis as the City can terminate such service to an in-City customer. The City and the customer will be responsible for arranging restoration of service.

6.10 (a) Developer and the District agree to adopt and impose water conservation measures upon customers and users of water in the Land, and to use all reasonable efforts to require the District to adopt and impose water conservation measures. Such water conservation measures imposed by Developer and/or the District shall be consistent with the conservation measures adopted and imposed from time to time by Manville Water Supply Corporation upon its members and by the City upon water customers of the City.

(b) Developer agrees to adopt and impose, and to use all reasonable efforts to require the District to adopt and impose, rules governing the discharge of wastewater into the Collection System that are consistent with the City's Industrial Waste Ordinance. The wastewater discharged into Collection System shall be treatable by standard wastewater treatment plant processes.

#### ARTICLE VII. MATERIAL BREACH

7.1 Except as expressly provided elsewhere in this Agreement, if a party to this Agreement commits a material breach of this Agreement, the other parties hereto may exercise all remedies at law or in equity including enforcement of the provisions violated; provided, however, that no such relief may be sought until written notice has been given to the defaulting party of such breach and a reasonable opportunity is given to the defaulting party to cure the breach, which in no event shall be less than ninety (90) days from the date of the notice. It is expressly understood and

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agreed by the parties that certain approvals and authorizations from non-parties, including the Commission, may be required to carry out or fulfill some of the obligations contained herein. Any delay in a party's ability to fulfill any obligations herein which results from such party being unable to timely obtain such authorizations shall not constitute a material breach. The parties specifically agree that in case of a material breach of this Agreement, the non-defaulting party shall have the equitable right of specific performance in addition to any other legal or equitable remedies available. A party shall not be liable for any special, indirect, incidental or consequential damages of any nature, including without limitation, loss of profits or revenue.

#### ARTICLE VIII. ADOPTION OF THIS AGREEMENT BY DISTRICT

8.1 As to any District within the Development, Developer shall use its best efforts to get that District to agree to a total conveyance and assignment to the District of Developer's interests in this Agreement, as such relates to that District. Upon assignment of all or part of the rights, duties, and obligations of Developer to a District, the District shall stand alone in the place and stead of Developer, with respect to those legal rights and duties specifically identified herein or indicated by the term "Developer," except as otherwise provided in the assignment, and provided that Developer and any subsequent developers of the Land shall not be relieved from compliance with this Agreement to the extent it imposes covenants running with the land or where the context of this Agreement imposes limitations on the subdivision of the Land into platted lots, including, without limitation, the restrictions on bonds and reimbursement contained in Article IV and the provisions concerning the Conceptual Land Development Plan and parkland dedication contained in Article V. Upon such assignment, Developer shall be released from the liabilities, responsibilities, and obligations under this Agreement that are transferred to the District.

#### ARTICLE IX. BENEFITS OF AGREEMENT

9.1 This Agreement is for the benefit of the City, the District, and Developer, its successors and assigns, and shall not be construed to confer any benefit on any other party except as expressly provided herein. This Agreement may be executed by the City and Developer prior to creation of a District and shall be binding upon the City and Developer pending creation of the District until the District accepts an assignment from Developer assuming Developer's obligations hereunder.

#### ARTICLE X. ASSIGNMENT OF AGREEMENT

10.1 Developer may from time to time transfer, convey or assign its interest in this Agreement in conjunction with the sale, conveyance or transfer of all or any part of the Land, and such transfer, conveyance, or assignment shall bind the assignee to the terms and conditions of this Agreement. If Developer assigns all or part of this Agreement, Developer shall provide the City with notice of the assignment. Upon such assignment, Developer shall be released from the liabilities, responsibilities and obligations under this Agreement with respect to the portion of the Land involved in the assignment or assignments, provided the assignee has assumed in writing the Developer's responsibilities hereunder as to such portion of the Land.

#### ARTICLE XI. TERM OF AGREEMENT

11.1 This Agreement shall be effective from the date of execution hereof by the City and Developer, and shall continue in effect for a period of fifteen (15) years from the date of the execution hereof, and shall be automatically extended for an additional fifteen year term at the end of the then current term; provided that, this Agreement shall not be automatically extended more than 2 times. This Agreement shall terminate at the end of the term, as extended, or at the time all of the Land has been annexed by the City and the City has assumed all obligations of the District.

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## ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 In the event any party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused as to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests, and restraints of governments and people, regulatory delay, explosions, breakage or damage to machinery or pipelines and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided

12.2 (a) Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage prepaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same the representative of the party identified in Section 12.2(b). Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) business days after it is

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so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. However, in the event of service interruption or hazardous conditions, neither party will delay remedial action pending the receipt of formal notice.

(b) For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided be as follows:

If to the City, to: City of Pflugerville  
P.O. Box 589  
Pflugerville, Texas 78660  
Attention: City Manager

If to Developer, to: KM Kelly Lane, Ltd.  
1011 N. Lamar Blvd.  
Austin, Texas 78703  
Attn: Blake J. Magee

The parties shall have the right from time to time and at any time to change their respective addresses and representative, and each shall have the right to specify as its address and representative any other address or representative, provided at least five (5) business days' written notice is given of such new address or representative to the other parties.

12.3 The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of the Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

12.4 Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the mutual written consent of the parties hereto or their successors and assigns that are affected by such change or modification.

12.5 The captions appearing at the first of each numbered section in this Agreement are inserted and included solely for convenience and shall never be considered or given effect in

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construing this Agreement, or any provision hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

12.6 (a) The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby, provided the overall intent and purpose of this Agreement can still be accomplished.

(b) In the event that the Commission or any court of competent jurisdiction determines that any provision of this Agreement exceeds the authority set forth by the Texas Water Code, the City, Developer, and the District agree to immediately amend this Agreement to conform to such ruling or decision, and maintain the original intent and purpose to the extent possible.

12.7 This Agreement embodies the entire agreement among the parties hereto on the subjects covered herein and there are no prior effective representations, warranties or agreements among the parties on the subjects covered herein.

12.8 The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.

12.9 Time is of the essence in the performance of all rights, duties, and obligations under this Agreement.

12.10 Venue for any action under this Agreement shall lie in Travis County, Texas.

12.11 The parties hereto covenant and agree that they shall take such further actions, and shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

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12.12 The parties acknowledge that Developer currently has the right to acquire the Land but does not own the Land as of the execution of this Agreement. This Agreement is being executed by Ronny Rinderknecht, Lonny Rinderknecht, Becky Krueger, Janie L. Freeborn and George H. Freeborn, Trustees of the Freeborn Family Living Trust dated November 15, 1994, George H. Freeborn, Jr., Jan Barron, Heidi Freeborn, Kathy Freeborn, W.A. Rinderknecht, Jeff Rinderknecht, Mike Rinderknecht, and Ricky Rinderknecht to evidence their consent to this Agreement, and their agreement to abide by the terms hereof.

12.13 This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(remainder of page intentionally left blank; next page is signature page)

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EXECUTED to be effective as of the date first above written.

City of Pflugerville, Texas

By: David Buesing  
Name: David Buesing  
Title: City Manager

KM Kelly Lane Ltd., a Texas limited partnership

By: KM Kelly Lane GP, Inc., a Texas corporation  
General Partner

By: Blake J. Magee  
Blake J. Magee, President

Consent of Current Owners

Current Owners are joining in this Agreement to evidence their consent hereto and their agreement to be bound by the provisions hereof.

Ronny Rinderknecht  
Ronny Rinderknecht

Lonny Rinderknecht  
Lonny Rinderknecht

BXK Becky L. Krueger  
Becky Krueger Krueger

Janie L. Freeborn  
Janie L. Freeborn, Trustee, under the Freeborn Family  
Living Trust dated November 15, 1994, as amended

George H. Freeborn  
George H. Freeborn, Trustee, under the Freeborn Family  
Living Trust dated November 15, 1994, as amended

George H. Freeborn, Jr.  
George H. Freeborn, Jr.

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Jan M. Barron  
Jan Barron

Heidi Freeborn  
Heidi Freeborn

Kathy Freeborn  
Kathy Freeborn

W.A. Rinderknecht  
W.A. Rinderknecht

Jeff Rinderknecht  
Jeff Rinderknecht

Mike Rinderknecht  
Mike Rinderknecht

Ricky Rinderknecht  
Ricky Rinderknecht

Exhibit A	Real Property Description of the Land
Exhibit B	Conceptual Land Development Plan
Exhibit C	Restrictive Covenant
Exhibit D	Professional Services Agreement

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EXHIBIT "A"  
TO  
COMPREHENSIVE DEVELOPMENT AGREEMENT

**FIELD NOTES**

JOB NO: \\Server\projects\_eng\Egpt\_04\40132\_RINDERKNECHT\DOCUMENTS\METES AND BOUNDS\TRACT I.doc  
DATE: MAY 14, 2004  
PAGE: 2 OF 3

**TRACT I - 540.30 ACRES**

All that certain tract or parcel of land in Travis County, Texas, out of the Philip Golden Survey No. 17, Abstract No. 328 and the Edward Flint Survey No. 11, Abstract No. 277 and being all that tract described as 200.00 acres in a Deed granted to Doris H. Rinderknecht, et al, dated July 9, 1996, and recorded in Volume 12839, Page 449, Real Property Records Travis County, Texas, all that tract described as "...45 acre tract..." in a Warranty Deed granted to Ronny Rinderknecht, et al, dated September 26, 1997, and recorded in Volume 13093, Page 49, of said real property records, all of that tract described as "...45 acre tract..." in a Warranty Deed granted to Jeff Rinderknecht, et al, dated September 26, 1997, and recorded in Volume 13093, Page 56, of said real property records, all that tract described as "...60 acre tract..." in a Warranty Deed granted to Jan Barron, et al, dated September 26, 1997, and recorded in Volume 13093, Page 42, of said real property records, and all that tract described as 190.461 acres in a General Warranty Deed granted to the Freeborn Family Living Trust, dated October 16, 2002, and recorded as Document No. 2003043266, Official Public Records Travis County, Texas, and further described by metes and bounds as follows:

BEGINNING at a 1-1/4" O.D. iron pipe found in the north margin of Kelly Lane for the occupied southwest corner of said Doris Rinderknecht tract and the southeast corner of that tract described as 72.51 acres in a Correction General Warranty Deed granted to RH of Texas Limited Partnership, a Maryland Limited Partnership, dated November 30, 2000, and recorded as Document No. 2001003791, of said official public records, for the southwest corner of this tract;

THENCE: along the west line of said Doris Rinderknecht tract and this tract in the following six (6) courses,

1. N 27°28'14" E with the east line of said RH of Texas Limited Partnership tract, at 572.92 feet passing a 60d nail found and called, in all 1083.76 feet to a 1/2" iron pin found,
2. N 27°16'22" E, at 402.69 feet passing a 1/2" iron pin found for the southeast corner of Fairways of Blackhawk, Phase IV, a subdivision recorded as Document No 200200058, Plat Records of Travis County, Texas, and continuing with the east line of said Fairways of Blackhawk, Phase IV, in all 482.55 feet to a 1/2" iron pin found,
3. N 27°16'22" E 79.60 feet to a 1/2" iron pin set with a yellow plastic cap inscribed "CCC 4835",
4. N 27°16'05" E 653.99 feet to a 60d nail found,
5. N 27°05'37" E 1394.33 feet to a 60d nail found at the base of a fence post in an offset of the south line of that tract described in a Special Warranty Deed granted to Robert M. Tiemann, dated January 1, 2000, and recorded as Document No. 2000127193, of said official public records for the northeast corner of said Fairways of Blackhawk, Phase IV and continuing with the offset south line of said Tiemann tract,
6. N 27°54'16" E 37.27 feet to a 1-1/4" O.D. iron pipe found for the northwest corner of said Doris Rinderknecht tract and this tract;

THENCE: along the north line of this tract in the following four (4) courses,

1. S 62°30'33" E 982.55 feet with the north line of said Doris Rinderknecht tract and the south line of said Tiemann tract to a 1/2" iron pin set with a yellow plastic cap inscribed "CCC 4835",
2. S 62°40'03" E 1347.13 feet continuing with the north line of said Doris Rinderknecht tract and the south line of said Tiemann tract (#2000127193) to a 1-1/4" O.D. iron pipe found for the common northeast corner of said Doris Rinderknecht tract and the northwest corner of said Ronny Rinderknecht tract,
3. S 62°46'18" E with the north line of said Ronny Rinderknecht tract at approximately 42.69 feet passing the common southeast corner of said Tiemann tract (#2000127193) and the southwest corner of that tract described as 261.87 acres in a Warranty Deed granted to Robert M. Tiemann, dated July 27, 1982, and recorded in Volume 7818, Page 214, Deed Records Travis County, Texas, at 528.23 feet passing a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the northeast corner of said Ronny Rinderknecht tract and the northwest corner of said Jeff Rinderknecht tract, at 1056.96 feet passing the northeast corner of said Jeff Rinderknecht tract and the northwest corner of said Jan Barron tract, in all 1762.85 feet to a 1-1/4" O.D. iron pipe found for the northeast corner of said Jan Barron tract and the northwest corner of said Freeborn Family Living Trust tract,

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BOUNDS\TRACT 1.doc  
DATE: MAY 14, 2004  
PAGE: 3 OF 3

4. S 62°40'37" E with the north line of said Freeborn Family Living Trust tract and the south line of said Robert M. Tiemann tract (7818/214), at 399.41 feet passing a 1/2" iron pin found for the southeast corner of said Robert M. Tiemann tract (7818/214) and the southwest corner of that tract described as 70.00 acres in Warranty Deed granted to Robert M. Tiemann, et ux, dated October 1, 1991, and recorded in Volume 11545, Page 1136, of said real property records, in all 2236.35 feet to a 1-1/4" O.D. iron pipe found for the northeast corner of said Freeborn Family Living Trust tract and this tract;

THENCE: with the west line of said Weiss Lane and the east line of said Freeborn Family Living Trust tract and this tract in the following eight (8) courses,

1. S 27°10'40" W 1469.06 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
2. S 18°06'55" W 497.10 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
3. S 26°04'30" W 543.79 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
4. S 38°44'35" W 95.42 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
5. S 48°29'15" W 95.18 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
6. S 39°35'45" W 174.74 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
7. S 28°50'05" W 301.73 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
8. S 27°13'14" W 528.71 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southeast corner of said Freeborn Family Living Trust tract and this tract;

THENCE: with the south line of this tract in the following four (4) courses,

1. N 63°04'45" W 2204.80 feet to a 1-1/4" O.D. iron pipe found for the southwest corner of said Freeborn Family Living Trust tract and the southeast corner of said Jan Barron tract,
2. N 63°04'45" W at 704.99 feet passing a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Jan Barron tract and the southeast corner of said Jeff Rinderknecht tract, at 1233.64 feet passing a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Jeff Rinderknecht tract and the southeast corner of said Ronny Rinderknecht tract, in all 1761.89 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Ronny Rinderknecht tract and the southeast corner of said Doris Rinderknecht tract,
3. N 63°04'45" W 1284.73 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
4. N 63°05'11" W 1071.77 feet to the place of Beginning and containing 540.38 acres of land of which approximately 90.36 acres are out of said Philip Golden Survey No. 17 and approximately 450.02 acres are out of said Edward Flint Survey No. 11.

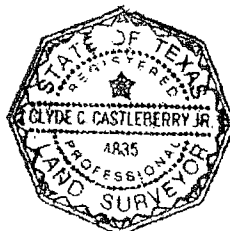
Bearings based on grid north Texas State Plane Coordinate System (Central Zone) NAD 83

Castleberry Surveying, Ltd  
203 South IH 35, Suite 101C  
Georgetown, Texas 78628



Clyde C. Castleberry, Jr.  
Registered Professional Land Surveyor No. 4835

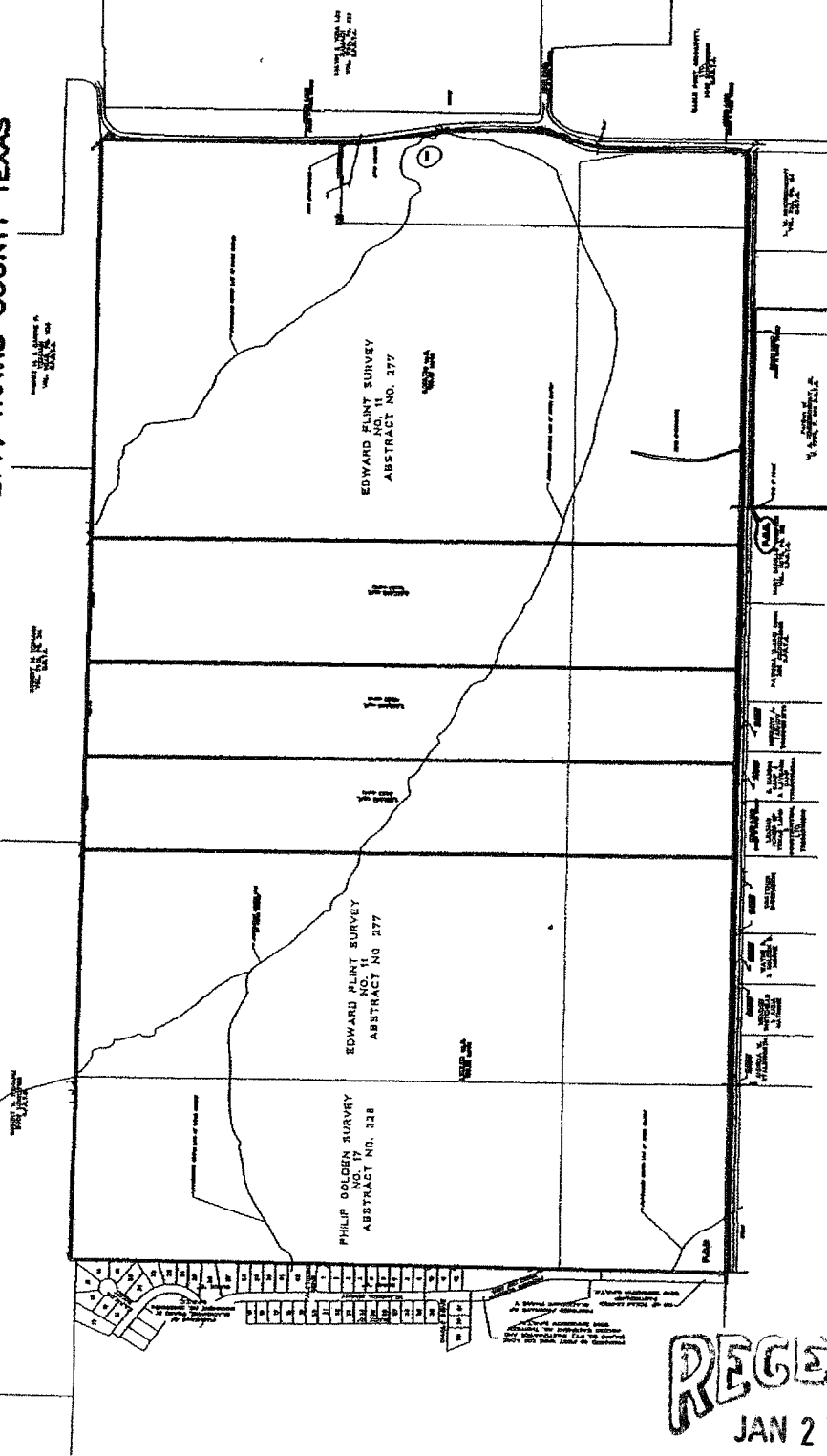
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540.30 ACRES OUT OF THE PHILIP GOLDEN SURVEY NO. 17, ABSTRACT NO. 328  
AND THE EDWARD FLINT SURVEY NO. 11, ABSTRACT NO. 277, TRAVIS COUNTY TEXAS

EXHIBIT OF



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**Castleberry Surveying, Ltd.**  
203 South I.H. 35, Suite 101C  
Georgetown, Texas 78628  
(512) 930-1600/(512) 930-9389 fax  
email: info@castleberrysurveying.com

SHEET

1

OF

1

KELLY LANE

50' LOTS  
SINGLE FAMILY

S

OD PLAIN

S  
MILY

BLACKHAWK DEVELOPMENT

55' LOTS  
SINGLE FAMILY

WEISS LANE

KELLY LANE

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UTILITIES & DISTRICTS  
SECTION

SCALE: 1"=600'  
0'

DATE: JI

SU

TOTAL ACREAGE  
NUMBER OF LOTS  
PUBLIC OPEN SPACE  
PARKLAND DEDICATED

LANDSCAPE ARCHITECTURE  
PLANNING  
URBAN DESIGN

1108 West Ave.  
Austin, Texas 78701  
Phone: 512-476-1559  
Fax: 512-476-8128  
E-mail: BradB@larsonburns.com

EDITED BY HUFFCUT & ASSOCIATES, INC. 06

EXHIBIT C  
TO COMPREHENSIVE DEVELOPMENT AND CONSENT AGREEMENT FOR KELLY  
LANE WCID NO. 1

RESTRICTIVE COVENANT

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

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SECTION

WHEREAS, Ronny Rinderknecht, Lonny Rinderknecht, Becky Krueger, Janie L. Freeborn and George H. Freeborn, Trustees of the Freeborn Family Living Trust dated November 15, 1994, George H. Freeborn, Jr., Jan Barron, Heidi Freeborn, Kathy Freeborn, W.A. Rinderknecht, Jeff Rinderknecht, Mike Rinderknecht, and Ricky Rinderknecht (hereinafter referred to as "Owners"), owns the real property in Travis County, Texas, described in the attached Exhibit 1 (the "Land").

WHEREAS, the City of Pflugerville, Texas, (the "City"), and the Owners have agreed that the Land should be impressed with certain covenants and restrictions running with the land and desire to set forth their agreement in writing;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby agree as follows with respect to the Land, which agreement will constitute a covenant running with the Land and will be binding on the Owners, their successors and assigns:

1. The Land will be developed in accordance with a Conceptual Land Development Plan, which has been agreed to by Owners and approved by the City. The Conceptual Land Development Plan may be modified and amended, in whole or in part, from time to time, by agreement between Owners and Owners' successors and assigns, and the City. Any construction on a particular tract within the Land which occurs before a modification or amendment to the Conceptual Land Development Plan shall not be affected by the modification or amended unless Owners or Owners' successors and assigns agree. The Conceptual Land Development Plan, and all modifications and amendments thereto, shall be recorded and on file with the City. The City's approval of a plat for a tract within the Land shall constitute the City's acknowledgment that such tract complies with the then-current Conceptual Land Development Plan and the requirements of this covenant.

2. As to any construction within the Land, if the construction is of a type which would require approval under the City's Site Development Code (Chapter 155 of the City's Code of Ordinances; the "Site Development Code") or Building Regulations (Chapter 150 of the City's Code of Ordinances; the "Building Code") if such construction was located within the City's limits, that construction shall comply with the Building Code and/or the Site Development Code that are in effect at the time of construction of the applicable structures. If, however, the City granted a variance to the City's Subdivision Code (Chapter 156, of the City's Code of

Ordinances) with respect to the tract upon which such construction occurs, the terms of that variance will be incorporated under the Building Code or the Site Development Code so as to permit construction consistent with the approved subdivision plat.

3. If any person or entity violates or attempts to violate this agreement and covenant, the City, or its successors and assigns, may prosecute proceedings at law or in equity against the person or entity violating or attempting to violate this agreement and covenant and may prevent said person or entity from violating or attempting to violate this agreement or covenant.

4. If any part or provisions of this agreement and covenant is declared invalid, by judgment or court order, that invalidity will not affect any of the other provisions of this agreement, and the remaining portions of this agreement will remain in full force and effect.

5. Any failure of the City, its successor and assigns, to enforce this covenant, whether the violations are known or not, will not constitute a waiver or estoppel of the City's right to do so.

6. This agreement may be modified, amended or terminated only by joint action of both (a) the City Manager of the City or another duly authorized representative of the City, and (b) the Owners of the Land, or the portion of the Land affected by such action, at the time of the modification, amendment, or termination. In no event, however, may any Owner of a portion of the Land modify this Agreement so as to increase the density on such portion of the Land without the consent of all Owners of the Land.

EXECUTED, this 6<sup>th</sup> day of August, 2004.

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OWNERS

UTILITIES & DISTRICTS  
SECTION

Ronny Rinderknecht  
Ronny Rinderknecht

Lonny Rinderknecht  
Lonny Rinderknecht

BLK Becky L. Krueger  
Becky Krueger Krueger

Janie L. Freeborn  
Janie L. Freeborn, Trustee, under the Freeborn Family Living  
Trust dated November 15, 1994, as amended

George H. Freeborn  
George H. Freeborn, Trustee, under the Freeborn Family  
Living Trust dated November 15, 1994, as amended



George H. Freeborn, Jr.  
George H. Freeborn, Jr.

Jan M. Barron  
Jan Barron

Heidi Freeborn  
Heidi Freeborn

Kathy Freeborn  
Kathy Freeborn

W.A. Rinderknecht  
W.A. Rinderknecht

Jeff Rinderknecht  
Jeff Rinderknecht

Michael Rinderknecht  
Michael Rinderknecht

Ricky Rinderknecht  
Ricky Rinderknecht

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JAN 27 2014

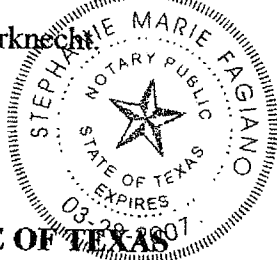
THE STATE OF TEXAS

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COUNTY OF TRAVIS

UTILITIES & DISTRICTS  
SECTION

This instrument was acknowledged before me on the 20<sup>th</sup> day of July, 2004, by  
Ronny Rinderknecht



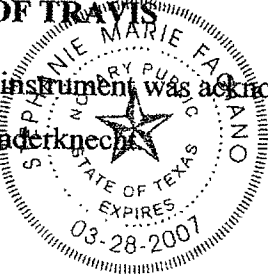
Stephanie Marie Fagiano  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 20<sup>th</sup> day of July, 2004, by  
Lonny C. Rinderknecht



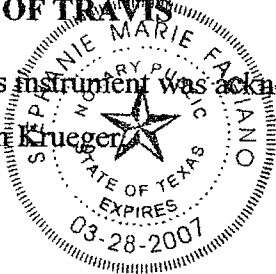
Stephanie Marie Fagiano  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 20<sup>th</sup> day of July, 2004, by  
Becky Lynn Krueger



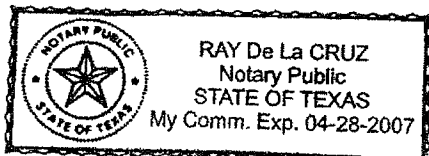
Janie Marie Fajano  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 2 day of Aug, 2004, by  
Janie Freeborn, Trustee, under the Freeborn Family Living Trust dated November 15, 1994, as  
amended.



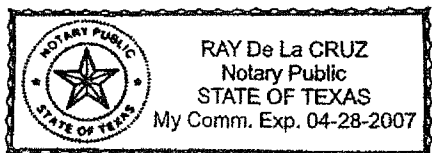
Ray De La Cruz  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 2 day of Aug, 2004, by  
George H. Freeborn, Trustee, under the Freeborn Family Living Trust dated November 15, 1994, as  
amended.



Ray De La Cruz  
Notary Public, State of Texas

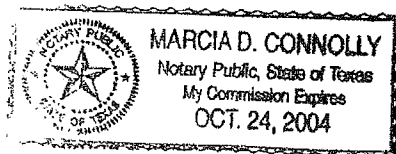
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UTILITIES & DIST. C.  
SECTION

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 6<sup>th</sup> day of August, 2004, by  
George H. Freeborn, Jr.



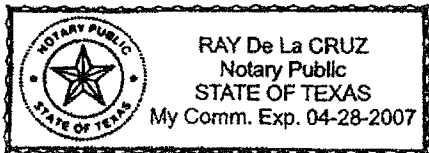
Marcia D. Connolly  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 2 day of Aug, 2004, by  
Jan Barron.



Ray De La Cruz  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

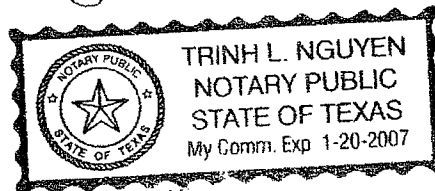
This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2004, by  
Heidi Freeborn.

[Signature]  
Notary Public, State of Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS



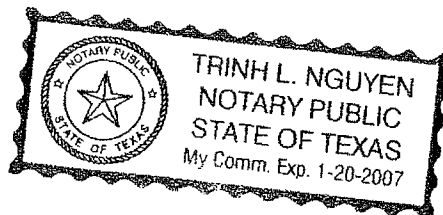
This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2004, by  
Kathy Freeborn.

[Signature]  
Notary Public, State of Texas

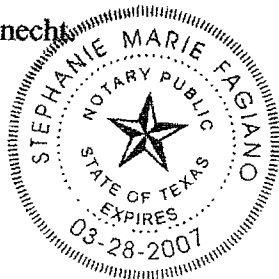
THE STATE OF TEXAS

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COUNTY OF TRAVIS



This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2004, by  
W.A. Rinderknecht



[Signature]  
Notary Public, State of Texas

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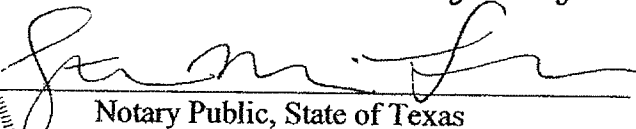
THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2004, by  
Jeff Rinderknecht.



  
Notary Public, State of Texas

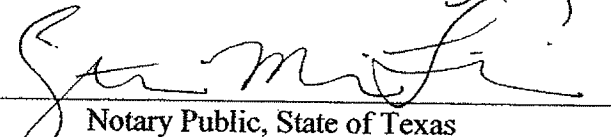
THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2004, by  
Michael Rinderknecht.



  
Notary Public, State of Texas

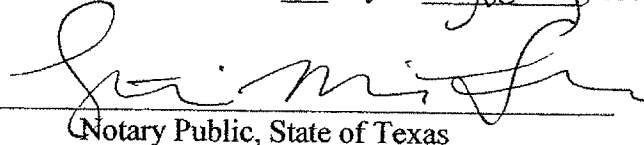
THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2004, by  
Ricky Rinderknecht.



  
Notary Public, State of Texas

After Recording Return To:

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EXHIBIT 1  
TO  
RESTRICTIVE COVENANT

FIELD NOTES

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DATE: MAY 14, 2004  
PAGE: 2 OF 3

TRACT 1 - 540.30 ACRES

All that certain tract or parcel of land in Travis County, Texas, out of the Philip Golden Survey No. 17, Abstract No. 328 and the Edward Flint Survey No. 11, Abstract No. 277 and being all that tract described as 200.00 acres in a Deed granted to Doris H. Rinderknecht, et al, dated July 9, 1996, and recorded in Volume 12839, Page 449, Real Property Records Travis County, Texas, all that tract described as "...45 acre tract..." in a Warranty Deed granted to Ronny Rinderknecht, et al, dated September 26, 1997, and recorded in Volume 13093, Page 49, of said real property records, all of that tract described as "...45 acre tract..." in a Warranty Deed granted to Jeff Rinderknecht, et al, dated September 26, 1997, and recorded in Volume 13093, Page 56, of said real property records, all that tract described as "...60 acre tract..." in a Warranty Deed granted to Jan Barron, et al, dated September 26, 1997, and recorded in Volume 13093, Page 42, of said real property records, and all that tract described as 190.461 acres in a General Warranty Deed granted to the Freeborn Family Living Trust, dated October 16, 2002, and recorded as Document No. 2003043266, Official Public Records Travis County, Texas, and further described by metes and bounds as follows:

BEGINNING at a 1-1/4" O.D. iron pipe found in the north margin of Kelly Lane for the occupied southwest corner of said Doris Rinderknecht tract and the southeast corner of that tract described as 72.51 acres in a Correction General Warranty Deed granted to RH of Texas Limited Partnership, a Maryland Limited Partnership, dated November 30, 2000, and recorded as Document No. 2001003791, of said official public records, for the southwest corner of this tract;

THENCE: along the west line of said Doris Rinderknecht tract and this tract in the following six (6) courses,

1. N 27°28'14" E with the east line of said RH of Texas Limited Partnership tract, at 572.92 feet passing a 60d nail found and called, in all 1083.76 feet to a 1/2" iron pin found,
2. N 27°16'22" E, at 402.69 feet passing a 1/2" iron pin found for the southeast corner of Fairways of Blackhawk, Phase IV, a subdivision recorded as Document No. 200200058, Plat Records of Travis County, Texas, and continuing with the east line of said Fairways of Blackhawk, Phase IV, in all 482.55 feet to a 1/2" iron pin found,
3. N 27°16'22" E 79.60 feet to a 1/2" iron pin set with a yellow plastic cap inscribed "CCC 4835",
4. N 27°16'05" E 653.99 feet to a 60d nail found,
5. N 27°05'37" E 1394.33 feet to a 60d nail found at the base of a fence post in an offset of the south line of that tract described in a Special Warranty Deed granted to Robert M. Tiemann, dated January 1, 2000, and recorded as Document No. 2000127193, of said official public records for the northeast corner of said Fairways of Blackhawk, Phase IV and continuing with the offset south line of said Tiemann tract,
6. N 27°54'16" E 37.27 feet to a 1-1/4" O.D. iron pipe found for the northwest corner of said Doris Rinderknecht tract and this tract;

THENCE: along the north line of this tract in the following four (4) courses,

1. S 62°30'33" E 982.55 feet with the north line of said Doris Rinderknecht tract and the south line of said Tiemann tract to a 1/2" iron pin set with a yellow plastic cap inscribed "CCC 4835",
2. S 62°40'03" E 1347.13 feet continuing with the north line of said Doris Rinderknecht tract and the south line of said Tiemann tract (#2000127193) to a 1-1/4" O.D. iron pipe found for the common northeast corner of said Doris Rinderknecht tract and the northwest corner of said Ronny Rinderknecht tract,
3. S 62°46'18" E with the north line of said Ronny Rinderknecht tract at approximately 42.69 feet passing the common southeast corner of said Tiemann tract (#2000127193) and the southwest corner of that tract described as 261.87 acres in a Warranty Deed granted to Robert M. Tiemann, dated July 27, 1982, and recorded in Volume 7818, Page 214, Deed Records Travis County, Texas, at 528.23 feet passing a 1/2" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the northeast corner of said Ronny Rinderknecht tract and the northwest corner of said Jeff Rinderknecht tract, at 1056.96 feet passing the northeast corner of said Jeff Rinderknecht tract and the northwest corner of said Jan Barron tract, in all 1762.85 feet to a 1-1/4" O.D. iron pipe found for the northeast corner of said Jan Barron tract and the northwest corner of said Freeborn Family Living Trust tract,

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**FIELD NOTES**

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DATE: MAY 14, 2004  
PAGE: 3 OF 3

4. S 62°40'37" E with the north line of said Freeborn Family Living Trust tract and the south line of said Robert M. Tiemann tract (7818/214), at 399.41 feet passing a ½" iron pin found for the southeast corner of said Robert M. Tiemann tract (7818/214) and the southwest corner of that tract described as 70.00 acres in Warranty Deed granted to Robert M. Tiemann, et ux, dated October 1, 1991, and recorded in Volume 11545, Page 1136, of said real property records, in all 2236.35 feet to a 1-1/4" O.D. iron pipe found for the northeast corner of said Freeborn Family Living Trust tract and this tract;

THENCE, with the west line of said Weiss Lane and the east line of said Freeborn Family Living Trust tract and this tract in the following eight (8) courses,

1. S 27°10'40" W 1469.06 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
2. S 18°06'55" W 497.10 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
3. S 26°04'30" W 543.79 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
4. S 38°44'35" W 95.42 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
5. S 48°29'15" W 95.18 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
6. S 39°35'45" W 174.74 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
7. S 28°50'05" W 301.73 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
8. S 27°13'14" W 528.71 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southeast corner of said Freeborn Family Living Trust tract and this tract;

THENCE, with the south line of this tract in the following four (4) courses,

1. N 63°04'45" W 2204.80 feet to a 1-1/4" O.D. iron pipe found for the southwest corner of said Freeborn Family Living Trust tract and the southeast corner of said Jan Barron tract,
2. N 63°04'45" W at 704.99 feet passing a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Jan Barron tract and the southeast corner of said Jeff Rinderknecht tract, at 1233.64 feet passing a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Jeff Rinderknecht tract and the southeast corner of said Ronny Rinderknecht tract, in all 1761.89 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set for the southwest corner of said Ronny Rinderknecht tract and the southeast corner of said Doris Rinderknecht tract,
3. N 63°04'45" W 1284.73 feet to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set,
4. N 63°05'11" W 1071.77 feet to the place of Beginning and containing 540.38 acres of land of which approximately 90.36 acres are out of said Philip Golden Survey No. 17 and approximately 450.02 acres are out of said Edward Flint Survey No. 11.

Bearings based on grid north Texas State Plane Coordinate System (Central Zone) NAD 83

Castleberry Surveying, Ltd  
203 South IH 35, Suite 101C  
Georgetown, Texas 78628



Clyde C. Castleberry, Jr.  
Registered Professional Land Surveyor No. 4835

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540.30 ACRES ACRES OUT OF THE PHILIP GOLDEN SURVEY NO. 17, ABSTRACT NO. 326  
AND THE EDWARD FLINT SURVEY NO. 11, ABSTRACT NO. 277, TRAVIS COUNTY TEXAS

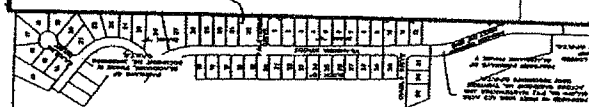
EXHIBIT OF

EDWARD FLINT SURVEY  
NO. 11  
ABSTRACT NO. 277

EDWARD FLINT SURVEY  
NO. 11  
ABSTRACT NO. 277

EDWARD FLINT SURVEY  
NO. 11  
ABSTRACT NO. 277

PHILIP GOLDEN SURVEY  
NO. 17  
ABSTRACT NO. 326



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**Castleberry Surveying, Ltd.**  
203 South I.H. 35, Suite 101C  
Georgetown, Texas 78628  
(512) 930-1600/(512) 930-9389 fax  
email: info@castleberrysurveying.com



SHEET

1 OF 1

## EXHIBIT D

### To Comprehensive Development and Consent Agreement For Kelly Lane WCID No. 1

#### PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into on the dates set forth below, by and among Kelly Lane Water Control and Improvement District No. 1 (the "District") and the City of Pflugerville (the "City"), a municipal corporation, each acting by and through its undersigned, duly authorized representative.

#### RECITALS

KM Kelly Lane, Ltd ("Developer") plans to or is currently constructing a water distribution system and a sanitary wastewater collection and transportation system (collectively, the "System") which will serve customers located within the geographic boundaries of the District, and the District is desirous of obtaining services for the competent operation, maintenance, and management of the system.

The City desires to provide operations, maintenance, and management services for the District's System.

The District and the City are desirous of entering into a definitive agreement pursuant to which the City shall operate, maintain and manage the System.

In consideration of the mutual agreements herein set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the District agree as follows:

#### ARTICLE I. DEFINITIONS

The following terms and expressions when used in the Agreement have the following meanings unless the context clearly indicates otherwise:

A. "Agreement" means this "Professional Services Agreement between Kelly Lane Water Control and Improvement District No. 1 and the City of Pflugerville, Texas Concerning the Operation, Maintenance and Management of Water and Wastewater Facilities and Services within Kelly Lane Water Control and Improvement District No 1."

B. "City" means the City of Pflugerville, Texas, a municipal corporation with its principal offices at 100 E. Main Street in Pflugerville, Travis County, Texas.

C. "Consent Agreement" means the Comprehensive Development and Consent Agreement For Kelly Lane WCID No. 1 between KM Kelly Lane, Ltd. and the City.

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Prof Services Ag  
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D. "Construction Agreement" means the NPWIS Construction and Participation Agreement (this "Agreement") by and among the City, Rowe Lane Development, Ltd., a Texas limited partnership, and Developer.

E. "Development" means the lands within the current or future boundaries of Kelly Lane Water Control and Improvement District No. 1, and each additional District which may be created as described in Section 1(E) below.

F. "District" means the Kelly Lane Water Control and Improvement District No.1. Such terms shall also mean each additional district which may be created by Developer either by division of the District into multiple districts pursuant to Article 51.748, Texas Water Code or by creation of multiple new districts as provided in the Consent Agreement.

G. "System" means the Developer or District owned meters, lines, facilities, equipment, lands and rights-of-way for the storage, transportation and distribution of a potable water supply, and any extensions or additions thereto, that may be constructed to serve water customers in the Development, and the Developer or District owned facilities, equipment, lands and rights-of-way for the collection and transportation of wastewater, and any extensions or additions thereto, to be constructed to serve wastewater customers in the Development.

## ARTICLE II. ADMINISTRATIVE SERVICES

The following administrative services shall be provided to the District by the City.

1. Organization. The City shall administer the work, activities, and operations of the District in accordance with the terms of this Agreement and the Consent Agreement.

2. Personnel. The City shall provide competent, trained personnel. System supervisors and/or operators shall be licensed or certified by the appropriate State governmental authority. Accounting, billing, and field personnel shall be trained to be professional and courteous in dealing directly with the District's customers.

3. Start Up. The City shall:

A. Maintain all of the District's customer information and records necessary to provide monthly billings to the District's customers.

B. Inventory and maintain a listing of all of the District's equipment including manufacturers' model and serial numbers, motor frame numbers and other such data as required to provide relevant information for the scheduled maintenance and repair or replacement of the equipment comprising the System.

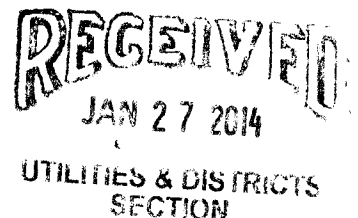
4. Maintenance Scheduling. The City shall implement a Scheduled Maintenance Program for System equipment. The City shall ensure that System equipment is maintained in the same fashion and with the same frequency as equipment owned and operated by the City or as may be required by Texas Commission on Environmental Quality or other regulatory agency with jurisdiction. Because the District(s) are under the continuing supervision of the Texas Commission on Environmental Quality, City shall submit its Scheduled Maintenance Program to the District for comment.
5. 24 Hour Service. The City shall maintain 24-hour telephone and dispatch service with qualified personnel to respond to customer problems and equipment malfunctions within the District in the same manner and fashion as for retail customers located within the City limits.
6. Automatic Telephone Alarm. The City shall monitor computer or automatic dialed telephone alarm systems at any of the water and wastewater facilities within the District which are installed and programmed to call the City's 24-hour telephone dispatch service.
7. Employee Identification. The City's operating and maintenance employees shall be readily identifiable to customers within the District by distinctive clothing. Service vehicles shall have the City emblem prominently displayed.
8. Coordination with Consultants. The City shall coordinate with other consultants, such as attorneys, engineers, auditors, tax assessors, and financial advisors hired by the Developer and/or the District as necessary to maintain efficient operation of the System.
9. Inquiries and Correspondence. The City shall respond to inquiries or correspondence from governmental or regulatory authorities and the District's directors, customers or consultants in a prompt, professional manner.
10. District Meetings. The City's Water and Wastewater System Manager, or other City representative designated by the City Manager, shall attend regularly scheduled meetings which have an agenda item relating to the District's operations. The City representative will have direct knowledge of the District's on-going operations or agenda items as appropriate.
11. Customer Relations. The City shall render reasonable assistance in the promotion of good relations with the customers located within the District.

ARTICLE III.  
WHOLESALE WATER AND WASTEWATER SERVICE

Wholesale water service to the District shall be provided by Manville Water Supply Corporation and wholesale wastewater service to the District shall be provided by the City. Developer shall pay capacity fees due to Manville under the wholesale contract directly to Manville Water Supply Corporation, and shall pay the City the fees specified in the Construction Agreement. All other fees and amounts due under the wholesale water and wastewater contracts shall be paid by the City directly to the wholesale supplier.

ARTICLE IV.  
RETAIL WATER AND WASTEWATER MANAGEMENT SERVICES

1. System Operations. The City shall provide: personnel, vehicles, hand tools, spare parts, and other equipment necessary for the operation of the System.
2. Bookkeeping Service. The City shall provide bookkeeping services including: accounting for all transactions involving the District's construction, operating, and tax funds, in accordance with the requirements of the Texas Commission on Environmental Quality as outlined in the WATER DISTRICT ACCOUNTING MANUAL.
3. Meter Reading, Billing and Collection. The City shall read the District's water meters once each month and bill the customers at rates set by the District. The City is authorized to make adjustments to water bills for clerical errors, over or under registration of water meters, erroneous meter readings, establishment of water usage during times when a meter has been inoperative, and other similar adjustments. City will resolve billing disputes with individual customers.
4. System Inspection. The City shall monitor the District's facilities daily, including weekends and holidays as required by state regulations. This shall include lift stations. City employees, whenever they are within the District boundaries, shall monitor the System in order to observe condition of fire hydrants, leaks, defects, damages and be alert for missing District equipment.
5. Daily Preventative Maintenance. The City shall provide all personnel and equipment necessary for preventative maintenance tasks.
6. Bulk Chemicals. The City shall be responsible, at its own expense, for maintaining an adequate inventory of chlorine and other bulk chemicals required to operate the System.
7. Expendable Items. The City shall, at the City's expense, replace those items expended in the daily operation of the System. Those items include, but are not limited to, brooms, mops, dip nets, rakes, shovels, trash cans, hoses, nozzles, padlocks, and other such items.
8. Monthly Operations Report. The City shall render a monthly operations report, as requested by the District, which shall include the following information, or other information to which the parties can agree:
  - A. Daily or monthly water flow data.
  - B. The number of gallons of water purchased by the District and the number of gallons billed to District's customers and a written explanation of the resulting difference.



- C. Total number of service connections, water and wastewater.
  - D. Records regarding equipment repairs and replacements.
  - E. Abnormal changes in condition of the District's equipment, needed repairs and recommended schedules for the repair of such equipment.
  - F. Insurance claims filed on behalf of the District.
  - G. Regular billing and collection reports, including cash receipts, billings and receivables.
  - H. Delinquent customer reports, including information on termination of water service and protests or appeals made by customers.
  - I. Summary of meters installed, inspections performed and fees collected.
  - J. Damage to the System and the possible causes thereof. In instances where the damage may be attributable to a contractor, builder, utility company or other entity, the City shall identify the party responsible for such damage, including administrative costs thereof, and include such information in the monthly report.
  - K. Statistics relating to overall System operations, as appropriate.
  - L. Operations and maintenance cost data.
  - M. Information and reports as may be required for audit of the District's accounts.
9. Regulatory Reports. The City shall prepare and submit reports and other documents required by regulatory authorities. The City shall provide the District copies of all reports and other submittals.
10. Regulatory Inspections. The City shall advise the District of inspections by regulatory authorities. When possible, the City shall schedule regulatory inspections to provide an opportunity for a representative of the District to attend such inspections.

ARTICLE V.  
INSTALLATION AND INSPECTION SERVICES

1. General. All meters and installation materials shall meet American Water Works Association standards and be in compliance with applicable city, county, or state codes. All installation and inspection fees shall be collected from the District's customers in advance, and shall be equal in amount to the installation and inspection fees charged by the City to in-city customers. The City shall maintain permanent records of meter services installed and tap fees paid. This includes a plat or map, as available, which shows the location of each meter installed and each sewer inspection performed.

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2. Residential Meters. Residential 3/4 inch water meter sets made to a visible curb stop set near ground level will be made for a fee equal to the then current charge assessed in-city customers for such service. Non-standard residential water meter sets, including location buried curb stops, will be made by the City for the same fee assessed in-city customers for such service.

3. Commercial Meters. Commercial meter tie-ins will be made by the City for a price quoted for each installation in accordance with the applicable specifications, the price to be equal to that charged commercial customers located within the City limits.

4. Water Tap Inspections. Inspection of water taps and service lines will be made as necessary at no cost to the District but subject to the fee for in-city inspections which shall be imposed according to City Ordinances.

5. Sanitary Sewer Inspections. The City shall inspect each sanitary sewer connection to the District's system to assure compliance with the District's specifications and procedures when and as necessary, at no cost to the District but subject to the fee for in-city inspections which shall be imposed according to City Ordinances.

6. Other Inspections. The City shall perform other inspections as requested or authorized by the District. Such inspections include, but are not limited to, grease traps, sample wells, cross connections or new facilities prior to acceptance by the District. The City may also participate in site inspections with contractors prior to the start of building activity to assist in verifying the condition of the District's system. All such other inspections shall be subject to such fees as are charged for similar in-city inspections or such fees authorized by the Consent Agreement.

#### ARTICLE VI MAINTENANCE, REPAIR AND REPLACEMENT SERVICES

1. Maintenance. The City shall provide all personnel, tools, spare parts, and equipment necessary to perform maintenance on the District's facilities and equipment. Maintenance shall include, but not be limited to, the following:

A. Maintenance or replacement of pumps, motors, valves and other equipment of facilities.

B. Calibration and servicing of instrumentation, control systems and other equipment.

C. Other maintenance as necessary which requires special skills and/or tools, performed in conformance with equipment manufacturer's recommendations to maintain warranties and to extend the useful life of the equipment.

2. Repair. The City shall provide all personnel and equipment necessary to perform repairs on, and shall bear sole cost responsibility for repair of, meters, lines, facilities, equipment, collection and distribution systems including, but not limited to, service line leaks or water

meters, water main breaks, repairs to valves and fire hydrants, manhole repairs, and sewer line repair and cleaning, as needed. The City shall not, however, bear cost responsibility for initial repair of any equipment or facilities identified by the City as in need of repair on the date of assumption of repair responsibility pursuant to the terms of this Agreement. The District will assign contractors' warranties to the City, and the City will cause repairs to be made under the terms of the warranty. Subsequent to acceptance of facilities by the City, the City shall be responsible for all repairs or replacement of same.

3. Replacement. The City shall use a reasonable degree of care with respect to replacement of equipment or facilities but shall not be responsible to the District for any guarantees or warranties offered by others in connection with such equipment or facilities.

4. Emergency Response. The City shall maintain personnel and equipment for emergency response 24 hours per day, seven days per week, 365 days per year. Emergencies shall include, without limitation, water leaks, water line breaks, loss of water pressure, degradation of water quality occurring within the water supply system, and blockage in the sewage collection system. Additionally, the City shall undertake reasonable efforts to respond to requests by the District or its representatives or insistent residents..

5. Materials and Supplies. The cost of all materials and supplies used to provide services under this Agreement shall be borne solely by the City.

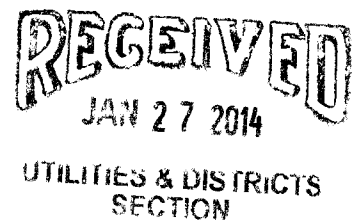
#### ARTICLE VII. PAYMENT

The City and the District agree that City's compensation for retail water and wastewater operation, maintenance and management services provided by the City, shall be satisfied from, and shall equal, the revenues collected by the City from the District's retail water and wastewater customers for retail water and wastewater service, excluding any amounts collected by the City on behalf of the District. All fees and charges assessed the District's retail water and wastewater customers by the City shall be set by the District to recover the costs of operating the District, operating and maintaining District facilities, obtaining wholesale water and sewer service, and fairly compensating the City for services provided under this Agreement. No additional charges, fees or the like shall be assessed against Developer or the District for such services.

#### ARTICLE VIII. MISCELLANEOUS PROVISIONS

1. Responsibilities.

A. City Responsibilities. The City shall exercise a reasonable degree of care and diligence in the operation and maintenance of the System in conformity with applicable laws, rules and regulations.



B. District Responsibilities. The District represents that the System is in good working order, does not contain any known defective equipment or facilities, is suitable and adequate for the needs of its customers and that all of its facilities are, or shall be, built in accordance with local, state and federal regulations. The District shall provide:

(i) All utilities and plant facilities necessary to commence operation of the System in a manner required to meet applicable regulations.

(ii) A complete set of record drawings of the System and any other information necessary for the administration of the System.

2. Relationship of the District and the City. The City shall serve in the capacity of an independent contractor for the District during the period of this Agreement.

3. Insurance. The City shall at all times during the effectiveness of the Agreement maintain in full force and effect Liability and Worker's Compensation Insurance covering the City's performance under this Agreement. All insurance shall be provided by insurers licensed and approved to do an insurance business in the State of Texas. Before commencement of work hereunder, the City agrees to furnish the District Certificates of Insurance or other evidence satisfactory to the District to the effect that such insurance has been procured and is in force. The City shall carry the following types of insurance in at least the limits specified below:

<u>Coverages</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employers' Liability	\$500,000.00
Bodily Injury Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Property Damage Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Bodily Injury Liability	\$500,000.00 each person \$1,000,000.00 each occurrence
Automobile Property Damage Liability	\$250,000.00 each occurrence
Excess Umbrella Liability	\$2,000,000.00 each occurrence

4. Indemnity. The City shall indemnify and save harmless the District and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limitation, any claim and damages arising from strict liability imposed in the District by statute, regulations, or common law, and all expenses of

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litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the negligent acts of City, its agents or employees, in the execution or performance of this Agreement. The liability that is assumed by City under the terms of this Paragraph shall not exceed the sum of \$2,000,000.00 which sum is the amount of liability insurance coverage required to be carried by City pursuant to this Agreement.

5. Force Majeure. In the event that the City or the District is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that each party shall give written notice of such force majeure to the other party as soon as possible after the occurrence of the cause relied on and shall, therefore, be relieved of its obligations, so far as they are affected by such force majeure, during the continuance of any inabilities so caused, but for no longer. The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or of the state or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability.

6. Full Compensation. The compensation to be paid to the City herein is inclusive of any tax, assessment, or other charge which may be imposed upon the City by any governmental authority as a result of performing its obligations pursuant to this Agreement.

7. Applicable Law. Venue and jurisdiction of any suit, right or cause of action arising under, or in connection with this Agreement shall lie exclusively in Travis County, Texas.

8. Notice. Whenever the provisions of this Agreement require notice to be given, such notice shall be given in writing by certified or registered mail and addressed to the party for whom intended at its then address of record and such notice shall be deemed to have been given when the notice was then mailed.

9. Term of Agreement. This Agreement shall take effect when executed by the City and District and shall continue in force for three years after execution unless terminated earlier as provided in this Agreement. Unless either party gives written notice of its election to terminate this Agreement at least 180 days prior to the end of any three-year period, this Agreement shall automatically be renewed for an additional three-year period at the expiration of each period.

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

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11. Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the mutual written consent of the parties hereto or their successors and assigns.

12. Captions. The captions appearing at the first of each numbered section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

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

14. Construction of Agreement. The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.

15. Other Instruments. The parties hereto covenant and agree that they shall take such further actions, and shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

16. Conflict Among Agreements. In the event a conflict is determined to exist between the terms and conditions of the Consent Agreement and this Agreement, the parties agree that the language of the Consent Agreement shall be controlling.

17. Termination. This Agreement shall be terminated at the time the land within the District has been annexed by the City of Pflugerville. Additionally, this Agreement may be terminated by the District if the City has failed to adequately operate and maintain the District's system pursuant to the terms and conditions of this Agreement; provided, however, that this right of termination may be enforced only after written notice has been given to the City of such failure and a reasonable opportunity is given to the City to cure the deficient performance, which in no event shall be less than ninety (90) days from the date of the notice.

(remainder of page left intentionally blank; next page is signature page)

EXECUTED in multiple copies, each of which shall constitute an original, on the dates set forth below:

ATTEST:

CITY OF PFLUGERVILLE, TEXAS

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

KELLY LANE WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 1

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

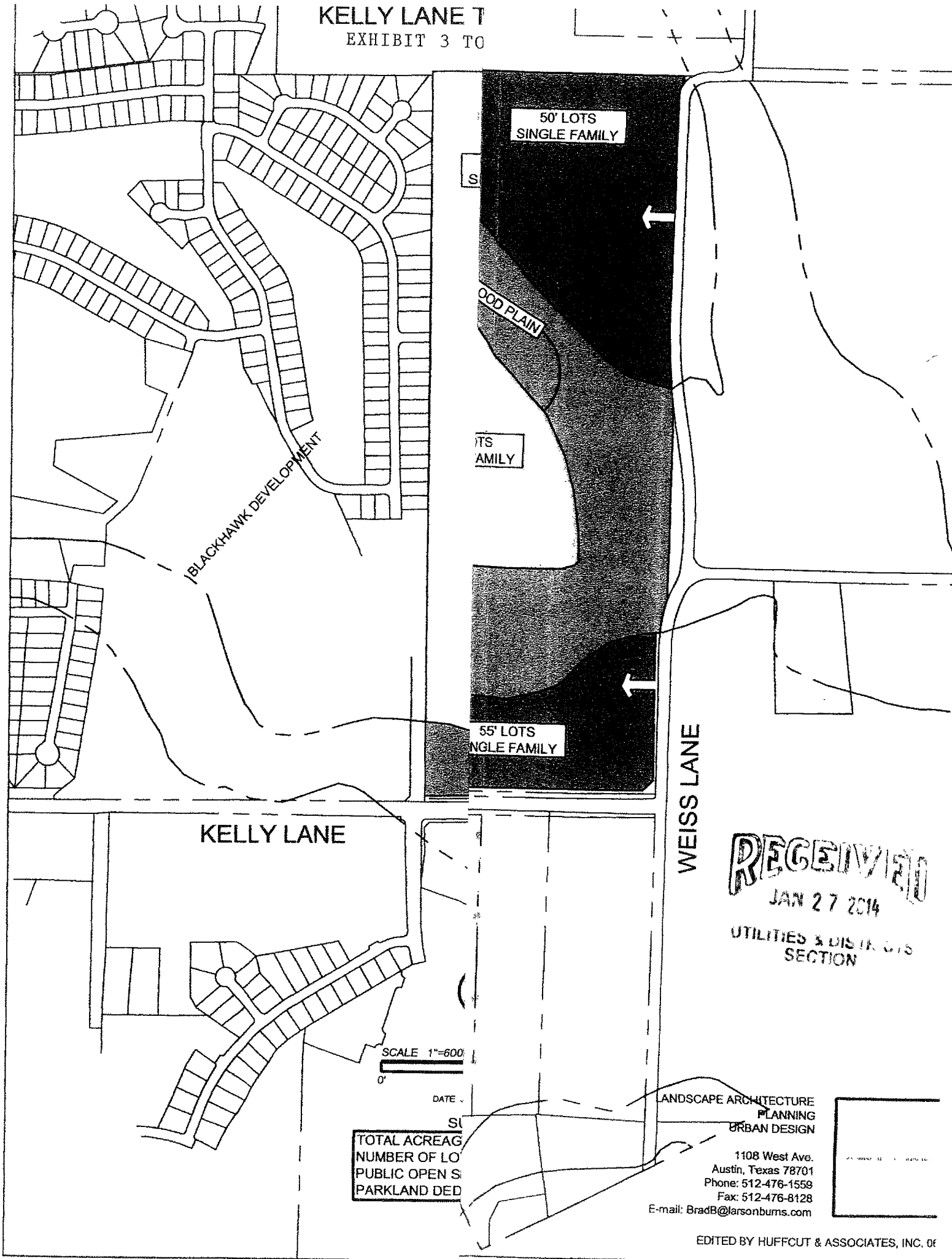
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Date: \_\_\_\_\_

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KELLY LANE T  
EXHIBIT 3 TO



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TOTAL ACREAGE  
NUMBER OF LOTS  
PUBLIC OPEN SPACE  
PARKLAND DEDICATED

LANDSCAPE ARCHITECTURE  
PLANNING  
URBAN DESIGN  
1108 West Ave.  
Austin, Texas 78701  
Phone: 512-476-1559  
Fax: 512-476-8128  
E-mail: BradB@larsenburns.com

EDITED BY HUFFCUT & ASSOCIATES, INC. OF

**FIELD NOTES**

JOB NO. Z:\Projects\_Eng\Egpt\_04\40132\_RINDERKNECHT\DOCUMENTS\METES AND BOUNDS\TRACT II.doc

DATE: MAY 14, 2004

40.00 ACRES

All that certain tract or parcel of land situated in Travis County, Texas, out of the Edward Flint Survey No. 11, Abstract No. 277, and being a portion of that tract described as 168.159 acres in a General Warranty Deed granted to W. A. Rinderknecht, Jr., dated June 16, 1982, and recorded in Volume 7780, Page 661, Deed Records of Travis County, Texas, and further described by metes and bounds as follows:

BEGINNING at a 1" iron pipe found in the south line of Kelly Lane for the northeast corner of that tract described as 20.00 acres in a Special Warranty Deed granted to Mary Camille Luedtke, dated January 15, 1993, and recorded in Volume 11857, Page 136, Real Property Records of Travis County, Texas, and the northwest corner of said Rinderknecht tract and this tract;

THENCE: S 63°13'48" E 1109.69 feet with the south line of said Kelly Lane and the north line of said Rinderknecht tract and this tract to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set in the south line of said Kelly Lane and the north line of said Rinderknecht tract for the northeast corner of this tract;

THENCE: S 27°24'43" W 1567.72 feet with the east line of this tract and across said Rinderknecht tract to a ½" iron pin with a yellow plastic cap inscribed "CCC 4835" set in the north line of that tract described 9.19 acres in a Deed of Gift granted to Karolyn Graf, et vir, dated October 21, 1997, and recorded in Volume 13049, Page 1351, of said real property records and in the south line of said Rinderknecht tract for the southeast corner of this tract;

THENCE: with the south line of said Rinderknecht tract and this tract in the following three (3) courses,

1 N 64°28'44" W 366.01 feet with the north line of said Graf tract to a ½" iron pin found for the northeast corner of The Villages of Hidden Lake, Phase I, a subdivision recorded as Document No. 200300119, Plat Records of Travis County, Texas, and the northwest corner of said Graf tract,

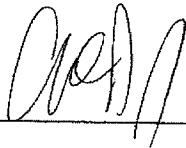
2. N 64°35'06" W 552.47 feet with the north line of said The Villages of Hidden Lake, Phase I subdivision to a ½" iron pin found,

3. N 62°39'58" W 178.45 feet to a ½" pipe found for the southeast corner of said Luedtke tract and the southwest corner of said Rinderknecht tract and this tract;

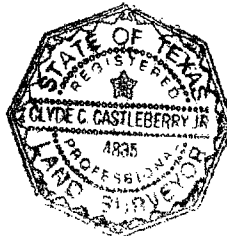
THENCE: N 26°56'04" E 1586.92 feet with the east line of said Luedtke and the west line of said Rinderknecht tract and this tract to the point of Beginning and containing 40.00 acres of land.

Bearings based on grid north Texas State Plane Coordinate System (Central Zone) NAD 83

Castleberry Surveying, Ltd.  
203 South IH 35, Suite 101C  
Georgetown, Texas 78628



Clyde C. Castleberry, Jr.  
Registered Professional Land Surveyor No. 4835



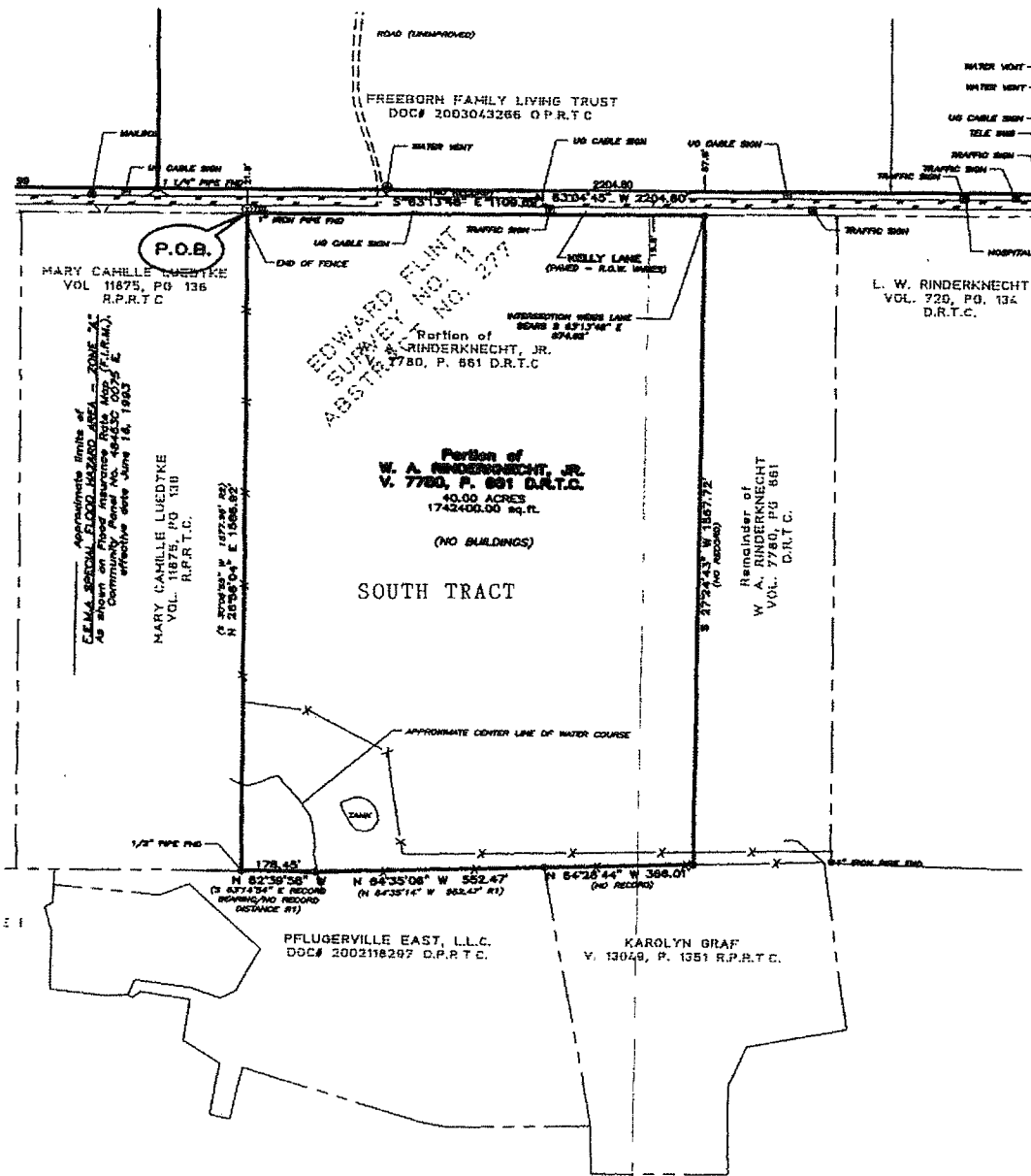
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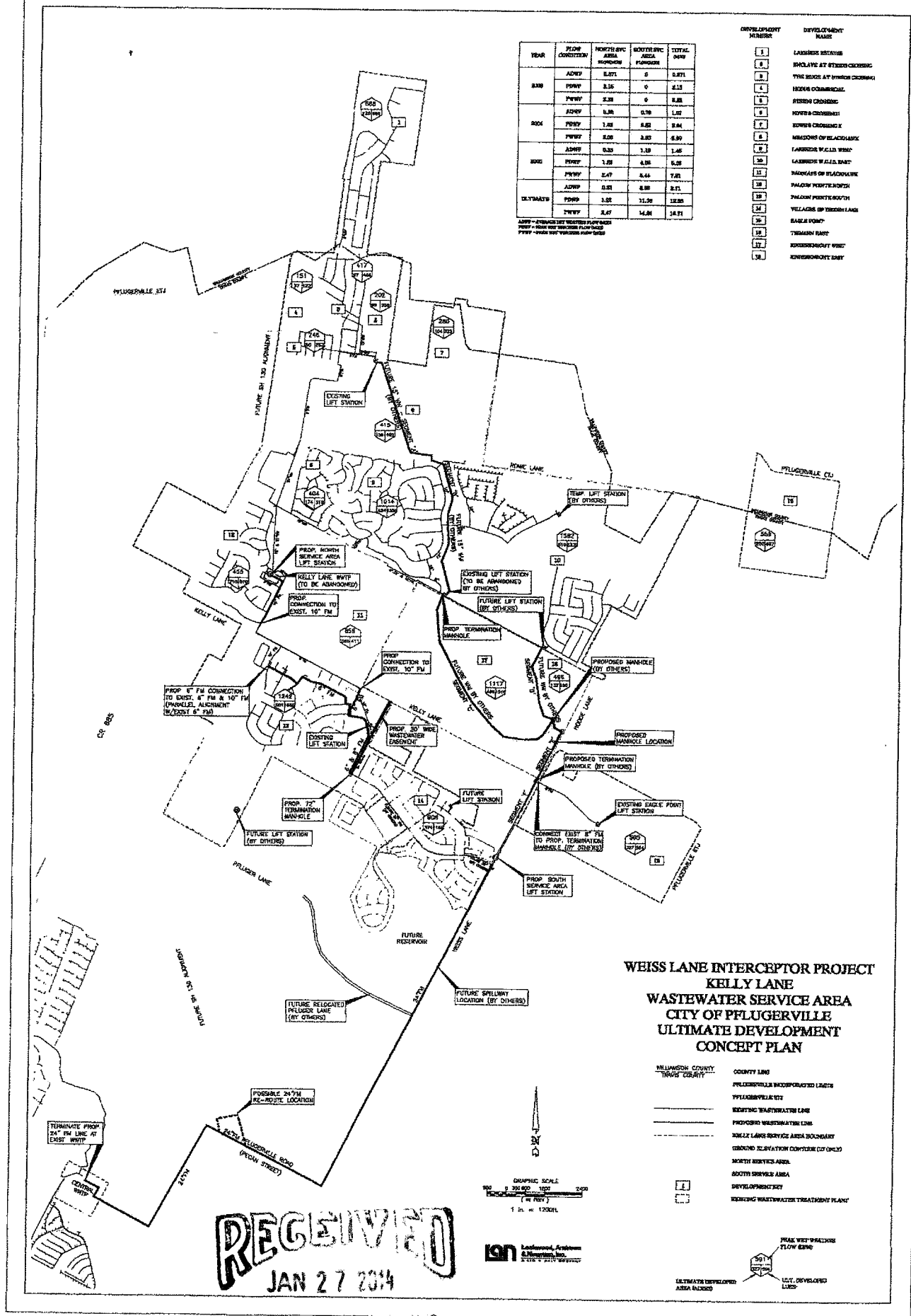


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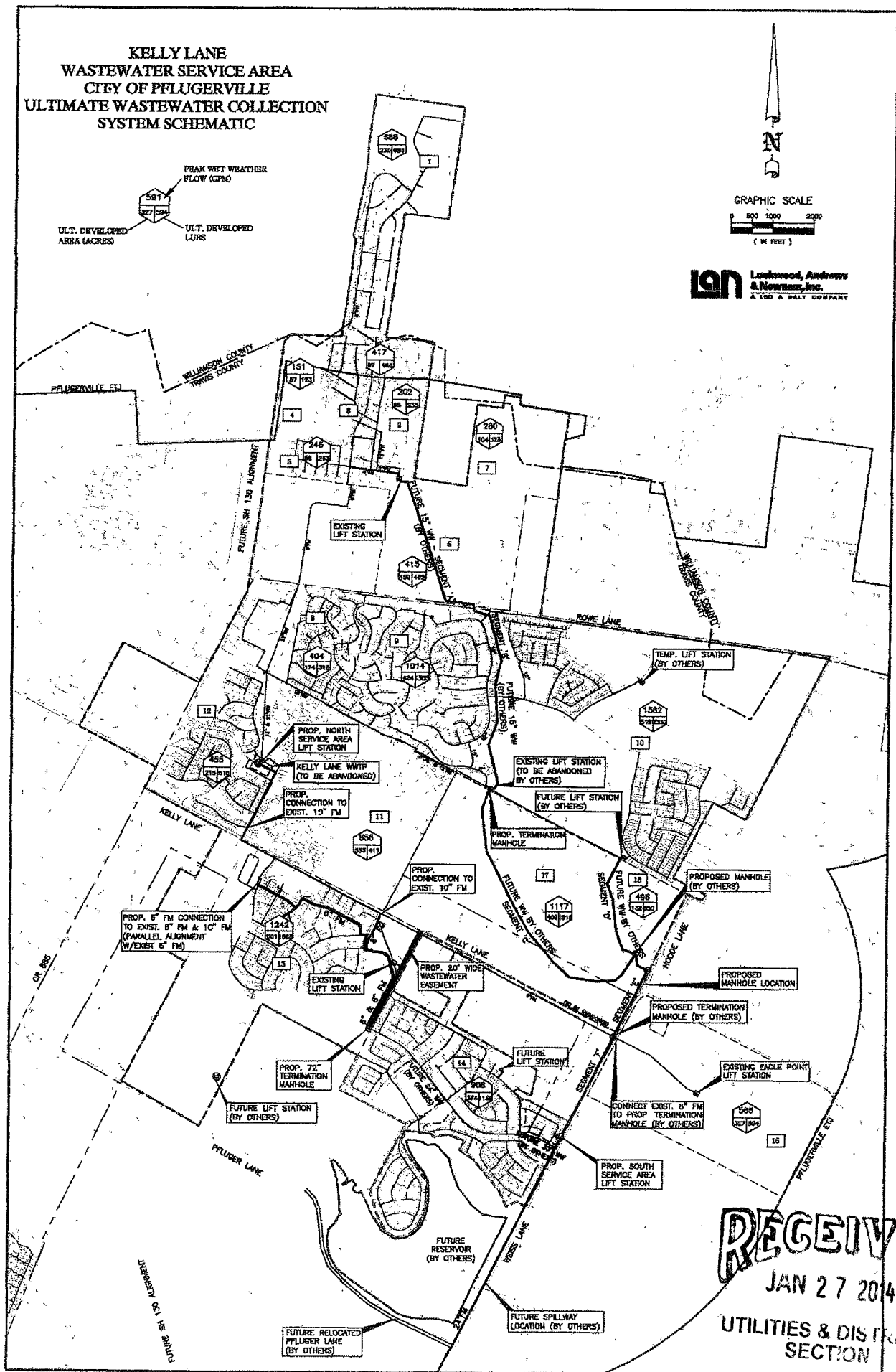
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**EXHIBIT 5 TO NPWIS CONSTRUCTION AND PARTICIPATION AGREEMENT**

**WASTEWATER UTILITY AND ACCESS EASEMENT AGREEMENT**

THE STATE OF TEXAS       §  
                                      §  
COUNTY OF TRAVIS       §

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**GRANT OF EASEMENT:**

\_\_\_\_\_, ("Grantor", whether one or more), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas ("Grantee"), an easement and right-of-way ("Easement") upon and across the property of Grantor, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Tract").

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights and privileges and on the terms and conditions set forth below.

Grantor does hereby covenant and agree to **WARRANT AND FOREVER DEFEND** title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to all title exceptions of record, to the extent the same are valid and subsisting against the Easement Tract, and the matters set forth herein.

**CHARACTER OF EASEMENT:**

The Easement is an easement in gross.

**PURPOSE OF EASEMENT:**

The Easement shall be used for wastewater utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of wastewater lines, wastewater utility facilities, and related appurtenances, or making connections thereto.

The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the wastewater lines and related utility facilities.

**DURATION OF EASEMENT:**

The Easement shall be perpetual.

**EXCLUSIVENESS OF EASEMENT:**

Subject to the following sentence and the section entitled "Surface Use" below, the Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement Tract. Grantor may alter or otherwise use the surface of the Easement Tract



for such purposes that do not interfere with the exercise by Grantee of the rights herein granted provided that the plans for all improvements to be placed in the Easement Tract by Grantor must be approved by Grantee before the improvements are constructed, with such approval not to be unreasonably withheld. Notwithstanding the foregoing, Grantor shall have the right to use the surface of the Easement Tract for roadways and driveways and related improvements and landscaping improvements installed no deeper than 24 inches below the surface of the land.

**SURFACE USE:**

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface the Easement Tract for any and all purposes which do not interfere with or prevent the use by Grantee of the Easement herein granted. Grantee has the right to trim and cut down trees and shrubbery and to remove other improvements and structures to the extent reasonably necessary to prevent interference with the operation or repairs to Grantee's facilities in the Easement Tract. Grantee will install temporary fencing adequate to contain and protect any livestock located on the Easement Tract during any construction activities.

**TEMPORARY CONSTRUCTION EASEMENT:**

In addition to the Easement granted, Grantee is hereby granted and conveyed a temporary construction easement ("Construction Easement") approximately thirty (30) feet in width upon and across the property of Grantor which is depicted on Exhibit "A" ("Construction Easement Area"), attached hereto and incorporated herein for all purposes, for the construction and installation of the wastewater facilities, including but not limited to, the wastewater lines with related facilities to be located upon the Easement Tract. The Construction Easement shall terminate and be of no further force or effect upon the earlier to occur of (i) twelve (12) months after commencement of construction of the facilities, or (ii) the completion of original construction of such facilities and acceptance of the facilities by Grantee for operation and maintenance.

**ENTIRE AGREEMENT:**

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

**BINDING EFFECT:**

This agreement shall bind and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns.

**ASSIGNABILITY:**

This Easement and Construction Easement the rights of Grantee hereunder may be assigned by Grantee so long as the assignee utilizes the Easement and Construction Easement as contemplated herein.

**RECEIVED**  
JAN 27 2014

UTILITIES & DISTRICTS  
SECTION

In witness whereof, this instrument is executed this \_\_\_\_ day of \_\_\_\_\_, 2004.

**GRANTOR:**

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

**RECEIVED, ACCEPTED AND  
AGREED TO BY GRANTEE:**

**CITY OF PFLUGERVILLE, TEXAS**

By: \_\_\_\_\_  
David Buesing, Acting City Manager

THE STATE OF TEXAS       §

COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2004, by  
David Buesing, Acting City Manager of the City of Pflugerville, Texas, on behalf of said municipality.

\_\_\_\_\_  
Notary Public Signature

(seal)

THE STATE OF TEXAS       §

COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2004, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

(seal)

**RECEIVED**  
JAN 27 2014  
UTILITIES & DISTRICTS  
SECTION