

Control Number: 44820



Item Number: 11

Addendum StartPage: 0

DOCKET NO. 44820

**APPLICATION OF CITY OF
HACKBERRY FOR A SEWER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN DENTON
COUNTY**

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§

PUBLIC UTILITY COMMISSION

OF TEXAS

2015 SEP 30 PM 12:26
FILING CLERK

**HACKBERRY'S APPLICATION AMENDMENT
AND RESPONSE TO NOTICE
OF MAPPING DEFICIENCIES**

COMES NOW the City of Hackberry, Texas (the "Applicant") and files this its first amendment to its application for a sewer CCN and its response to the mapping deficiencies stated in the Commission's Staff's Response to Order No. 1 more fully developed in the PUC Interoffice Memorandum dated July 7, 2015 (the "Memorandum"). The sections that follow correspond to the numbered sections of the Memorandum.

1. Attachment No. 2 to the Applicant's sewer CCN application is supplemented by Hackberry CCN General Location Map attached hereto as Exhibit A. The General Location Map was developed by superimposing the proposed Hackberry Sewer CCN on the most recent Denton County GIS map showing only the proposed service area with enough detail to accurately locate the service area within the nearest city or town.

2. Attachment No. 2 to the Applicant's sewer CCN application is supplemented by Hackberry CCN Large Scale Map attached hereto as Exhibit B. The Large Scale Map was developed by superimposing the proposed Hackberry Sewer CCN on the most recent Denton County GIS map showing only the proposed service area with enough detail to accurately locate the service area in the vicinity of surrounding roads, streets and highways.

3. The Applicant's Application is supplemented with an additional copy of the data disk (CD) filed with the Applicant's Application attached hereto within an envelop identified as Exhibit C. The data disk was prepared under the direction of the Applicant's engineer, Mark D. Hill, P.E., and it contains digital data only including the proposed service area in a drawing (DWG) file format. The digital data corresponds to the same proposed service area as shown on the small and large scale

11

maps attached hereto.

- 3.a. The digital data submitted herein does not show an overlap with the CCN boundaries of the City of Frisco CCN 20591. The digital data submitted herein does not show an overlap with the Town of Little Elm CCN 20931. On October 22, 2013, The Town of Little Elm and the City of Hackberry entered into an ETJ and CCN Agreement. A copy of the Agreement is attached hereto as Exhibit D. In April of 2014, the Town of Little Elm filed an application to amend its water and sewer CCN under Docket No. 43452. The Little Elm application relating to amending its sewer CCN boundaries is consistent with Applicant's application for a sewer CCN. The Little Elm CCN Application is currently abated until November 2, 2015.
- 3.b. The Applicant's engineer, Mark D. Hill, P.E., has thoroughly reviewed the current boundary maps of the City of Frisco, the Town of Little Elm and The Colony and determined that the boundary of the Applicant's proposed sewer CCN does not overlap the corporate boundaries of the City of Frisco, the Town of Little Elm or The Colony.
- 3.c. The digital data filed by the Applicant is a single, continuous polyline or polygon record, which is clearly labeled as the proposed service area.
- 3.d. The digital data filed by the Applicant was created using the NAD 83 datum based upon available information from field surveys and real property deeds.

The Applicant proposes that in order to resolve any continuing mapping issues that the appropriate member(s) of the Staff and the Applicant's engineer communicate either by telephone conference or in person.

Respectfully Submitted,

By: 

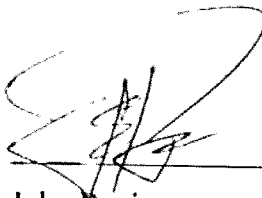
John Rapier
State Bar No. 16550500
GAY, MCCALL, ISAACKS & ROBERTS, P.C.
777 E. 15th Street
Plano, Texas 75074
Tel (972) 424-8501
Fax (972) 422-9322
jrapier@gmigr.com
Attorney for Applicant,
the City of Hackberry, Texas

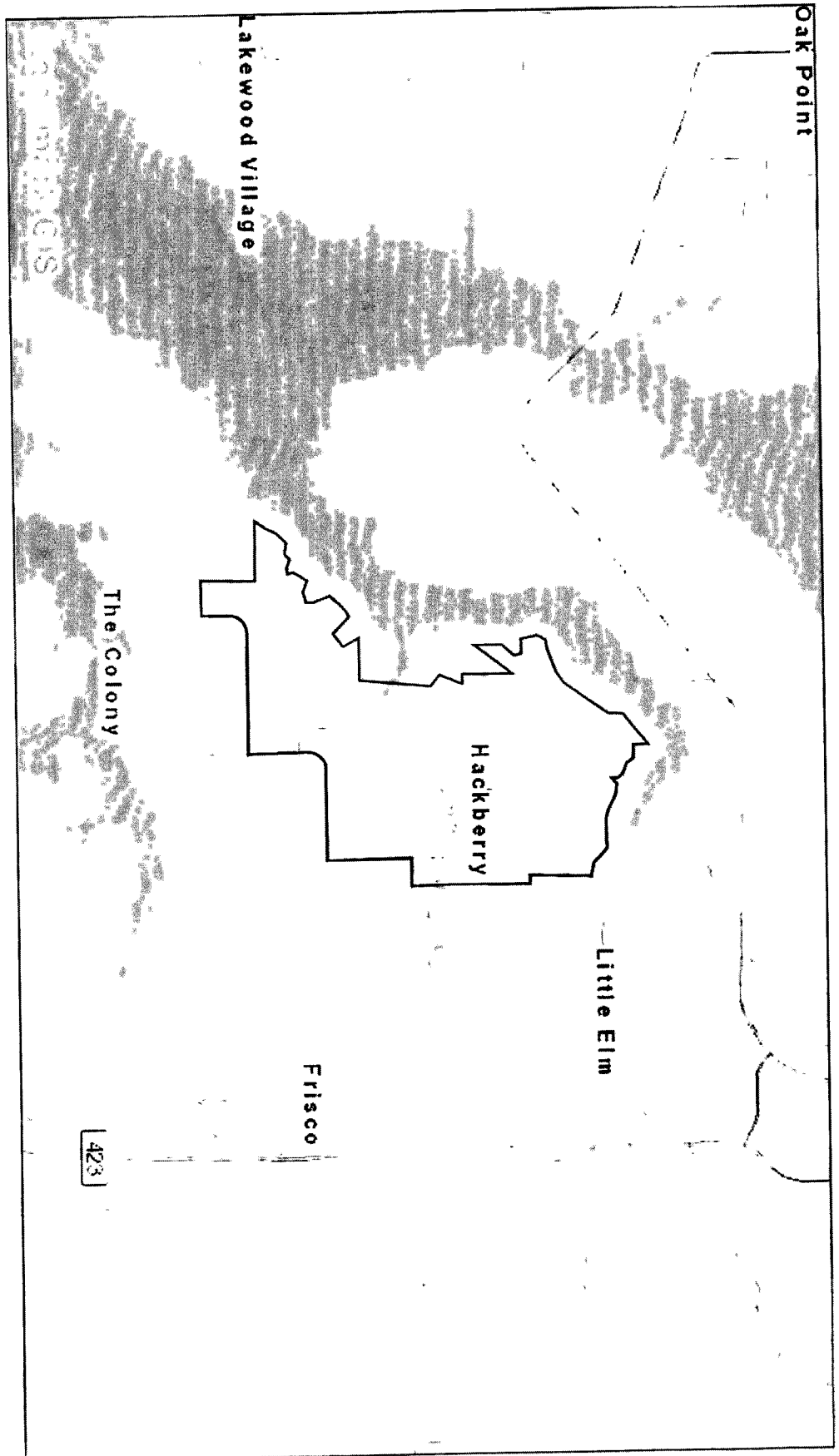
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on the following parties of record on September 29, 2015, in accordance with 16 TAC § 22.74.

Via electronic mail - Douglas.Brown@puc.texas.gov

Douglas Brown
Attorney-Legal Division
Public Utilities Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326


John Rapier



Hackberry CCN GENERAL LOCATION MAP

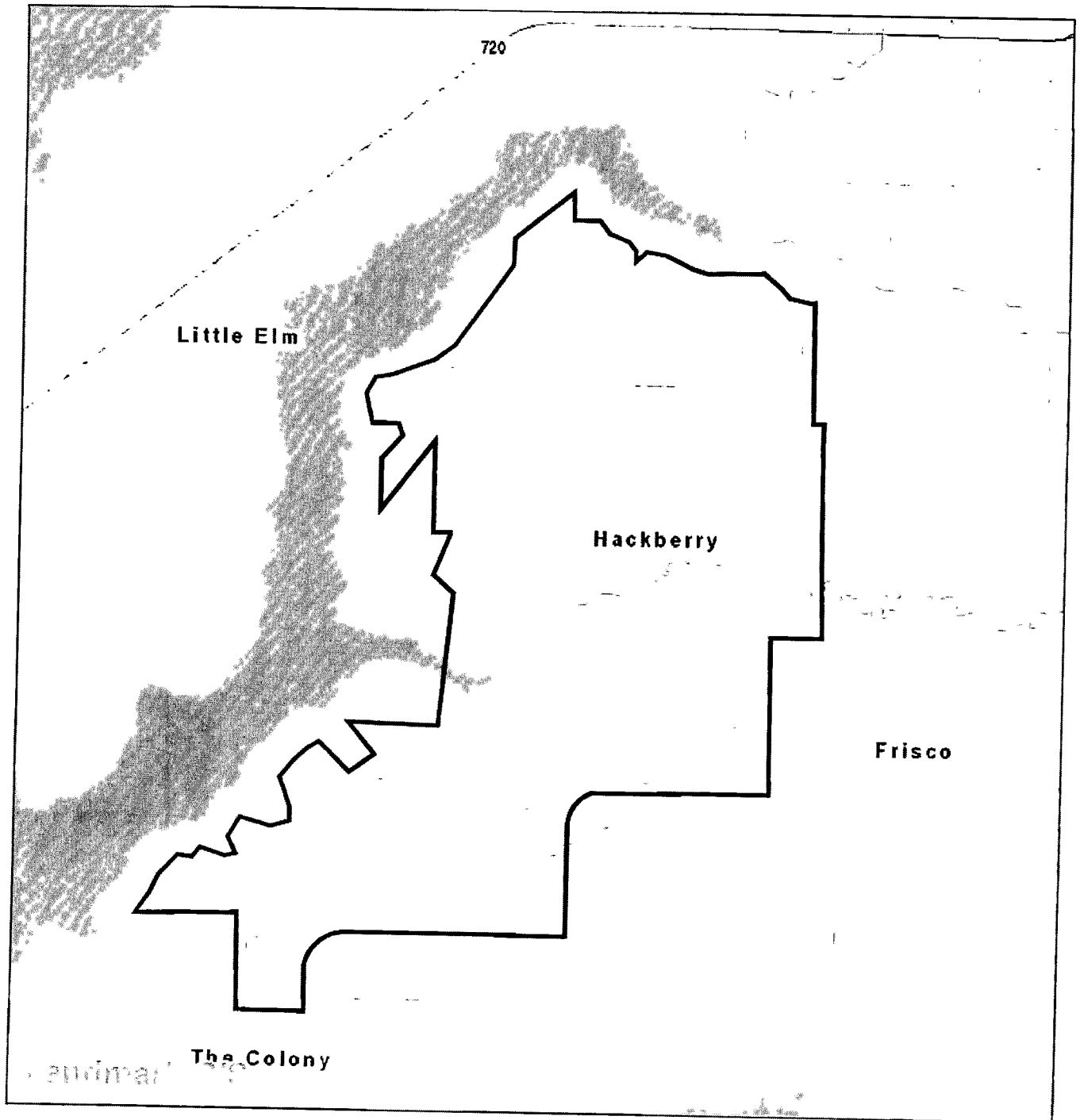


<http://gis.dentoncounty.com>



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Denton County does not guarantee the correctness or accuracy of any features on this product and assumes no responsibility in connection therewith. This product may be revised at any time without notification to any user.



Hackberry CCN LARGE SCALE MAP



<http://www.dentoncounty.com>

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EXHIBIT C

Docket No. 44820
City of Hackberry Sewer CCN Application
Data Disk (CD)

An original disk was filed with the original of
City of Hackberry's Application Amendment and Response to
Notice of Mapping Deficiencies on
September 29, 2015

**ETJ AND CCN AGREEMENT
BY AND BETWEEN THE
CITY OF HACKBERRY AND THE TOWN OF LITTLE ELM
JOINED BY
D.R. HORTON - TEXAS, LTD.**

This Interlocal Agreement ("Agreement") is entered into pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the City of Hackberry, a Texas municipal corporation ("Hackberry"), and the Town of Little Elm, a Texas home-rule municipal corporation ("Little Elm"). D.R. Horton - Texas, Ltd., a Texas Limited Partnership ("Horton"), a beneficiary of this Agreement, is joined as a party to this Agreement for the purposes herein expressed.

WHEREAS, Horton owns and intends to develop a 145.4 acre tract described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property lies partially within the extraterritorial jurisdiction ("ETJ") of Little Elm and partially within the corporate limits of Hackberry; and

WHEREAS, the Property lies wholly within the water certificate of convenience and necessity ("CCN") issued by the Texas Commission on Environmental Quality ("TCEQ") of Hackberry, but only partially within the sewer CCN of Little Elm; and

WHEREAS, Horton and Hackberry have executed a Development Agreement that is partially contingent on all of the Property being placed wholly within the jurisdiction of Hackberry; and

WHEREAS, the parties recognize that it is in the best interests of all concerned that the Property be developed under Hackberry's jurisdiction; and

WHEREAS, the Act authorizes local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, Section 42.023 of the Local Government Code authorizes a municipality to reduce its ETJ by a resolution adopted by the governing body of the municipality; and

WHEREAS, Hackberry and Little Elm agree by this Agreement to adjust their respective water and sewer CCNs to be consistent with their ultimate boundary agreement; and

WHEREAS, Hackberry and Little Elm agree to jointly submit their agreement relating to the adjustment or revision of their respective CCNs to the TCEQ for approval pursuant to Section 13.248 of the Texas Water Code; and

WHEREAS, Hackberry and Little Elm, in the true spirit of governmental cooperation, intend this Agreement to reflect sound growth management principles and inter-regional planning.

NOW, THEREFORE, this Agreement is made and entered by the parties upon and for the mutual considerations hereinafter stated.

1. ETJ or Ultimate Boundary Agreement:

a. Hackberry and Little Elm agree to an ultimate common corporate boundary or extraterritorial jurisdiction ("ETJ") line (the "Line") from and after the Effective Date as described in Exhibit "B" attached hereto.

b. Provided that the transaction fees set forth in Section 3(a) and (b) of this Agreement have been paid to Little Elm, Little Elm agrees to release any ETJ that it may have south and east of the Line and will, within sixty (60) days after the Effective Date of this Agreement, pass a resolution to effectuate the release of such ETJ.

c. Hackberry agrees to release any ETJ that it may have north and west of the Line and will, within sixty (60) days after the Effective Date of this Agreement, pass a resolution to effectuate the release of such ETJ.

2. CCN Transfer Agreement:

a. Little Elm agrees to transfer to Hackberry that portion of its sewer CCN No. 20931 that currently lies south and east of the Line to Hackberry as shown on Exhibit C attached hereto.

b. Hackberry agrees to transfer to Little Elm that portion of its water CCN No. 12015 that currently lies north of King Road and east of lots fronting on Flanagan Circle as shown on Exhibit D attached hereto.

c. Hackberry agrees to prepare the necessary sale, transfer or merger transfer application (the "STM") for submission to the TCEQ. Little Elm agrees to assist Hackberry in the preparation of the STM by timely providing Hackberry with any and all information required to submit on or with the STM concerning Little Elm's water and sewer facilities, personnel, rates or capacities. Both Little Elm and Hackberry agree to execute the STM by and through their authorized representatives. In the unlikely event that a hearing on the STM is required by the TCEQ, then Little Elm and Hackberry agree that they will provide appropriate witnesses available for testimony supporting the STM.

3. Consideration:

a. As consideration for this Agreement, Horton agrees to pay and Little Elm agrees to accept a transaction fee of \$1,100.00 per acre for that portion of the Property that lies within Little Elm's current ETJ. The parties agree that 57.3 acres of the Property lies within Little Elm's ETJ. Therefore, Horton has agreed to pay the transaction fee sum of \$63,030.00 to Little Elm at or before the time that Little Elm passes the ETJ release resolution described in Section 1(b) of this Agreement.

b. As further consideration, Hackberry agrees to pay and Little Elm agrees to accept a transaction fee of \$1,100.00 per acre for that portion of the Dhaka tract that lies within Little Elm's ETJ. Little Elm and Hackberry agree that 28.3 acres of the Dhaka tract lies with Little Elm's ETJ. Therefore, Hackberry has agreed to pay the transaction fee sum of \$31,130.00 to Little Elm at or before the time that Little Elm passes the ETJ release resolution described in Section 1(b) of this Agreement.

c. As further consideration, Hackberry and Horton agree that the Property and the adjacent portions of King Road will be developed consistent with standards listed on Exhibit E attached hereto.

4. General Conditions.

a. Failure of either party to comply with or perform any term, obligation, or condition of this Agreement shall constitute an event of default. The non-defaulting party shall notify the other party of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, or enforce specific performance as appropriate.

b. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this agreement. The parties agree that this Agreement is performable in Denton County, Texas, and that exclusive venue shall lie in Denton County, Texas, or with the TCEQ.

c. This Agreement embodies the entire agreement between the parties.

d. This Agreement shall be binding upon the parties hereto, their successors, personal representatives and assigns. Neither of the parties will assign nor transfer an interest in this Agreement without the written consent of the other party.

e. The effective date of this Agreement shall be the last day this Agreement is approved by a party hereto as indicated on the signature blocks below (the "Effective Date").

f. The governing bodies of both Little Elm and Hackberry have approved this Agreement as to form and content and authorized their respective representatives to execute this Agreement on behalf either Hackberry or Little Elm.

g. A party to this Agreement may file a certified copy of this Agreement in the real property records of Denton County.

APPROVED by the City Council of the City of Hackberry, Texas, in its meeting held on the 22nd day of October, 2013, and executed by its authorized representative.

CITY OF HACKBERRY

By: 
Ronald Austin, Mayor

ATTEST

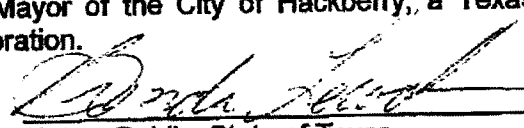

Brenda Lewallen, City Secretary

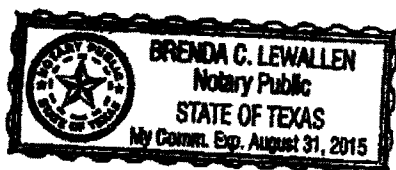


STATE OF TEXAS

COUNTY OF DENTON

This instrument was acknowledged before me on the 22nd day of October, 2013, by Ronald Austin, Mayor of the City of Hackberry, a Texas municipal corporation, on behalf of said corporation.


Notary Public, State of Texas



APPROVED by The Town Council of The Town of Little Elm, Texas, in its meeting held on the 15th day of October, 2013, and executed by its authorized representative.

TOWN OF LITTLE ELM

By: 

David Hillock, Mayor

ATTEST: 

Kathy Phillips, Town Secretary

STATE OF TEXAS

COUNTY OF DENTON

This instrument was acknowledged before me on the 15th day of October, 2013, by David Hillock, the Mayor of the Town of Little Elm, a Texas municipal corporation, on behalf of said corporation.


Notary Public, State of Texas

APPROVED by D.R. Horton-Texas, Ltd., and executed by its authorized representative on the 23rd day of October, 2013.

D.R. Horton--Texas, Ltd.
a Texas limited partnership
by its general partner,
D.R. Horton, Inc., a Delaware
corporation

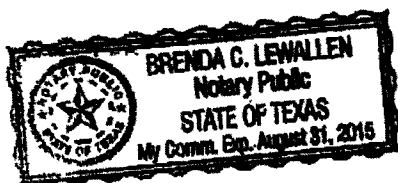
By: [Signature]
David L. Booth, Asst. Vice President

THE STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared David L. Booth, Asst. Vice President of D.R. Horton, Inc., a Delaware corporation and the general partner of D.R. Horton - Texas, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same for the purposes and consideration therein expressed on behalf D.R. Horton, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23rd DAY OF October, 2013.



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION OF THE PROPERTY

BEING all of that parcel located in Denton County, Texas, being a part of the following surveys: John H. House Survey, Abstract Number 595, Matthew Jones Survey, Abstract Number 667, and the John H. King Survey, Abstract Number 694, and being all of that called 145.3971 acre parcel of land described in deed to D.R. Horton-Texas, Ltd., as recorded in Document Number 2012-124362, Denton County Deed Records, and being further described as follows:

BEGINNING at a five-eighths inch iron rod found at the southwest corner of said 145.3971 acre tract, said point also being the southeast corner of a parcel of land described in deed to Little Elm Cemetery Association, as recorded in Volume 1348, Page 486, Denton County Deed Records, said point also being in the north right-of-way line of King Road;

THENCE North 01 degrees 54 minutes 50 seconds East, 1793.14 feet to a five-eighths inch iron rod found at the northwest corner of said 145.3971 acre tract, said point being the northeast corner of said Little Elm Cemetery Association tract, said point also being in the south line of a parcel of land described in deed to William S. Thomas, as recorded in Volume 5322, Page 306, Denton County Deed Records;

THENCE along the north line of said 145.3971 acre tract as follows:

South 88 degrees 09 minutes 04 seconds East, 251.46 feet to a three-quarters inch iron rod found for corner, said point also being the southeast corner of said Thomas tract;

North 00 degrees 54 minutes 19 seconds East, 617.96 feet along the east line of said Thomas tract to a U.S. Corps of Engineer Monument (H-716-6) found for corner, said point also being at the southwest corner of that called 23.6 acre parcel of land described in deed to United State of America, as recorded in Volume 414, Page 290, Denton County Deed Records;

THENCE South 89 degrees 35 minutes 17 seconds East, 334.02 feet along the north line of said 145.3971 acre tract to a U.S. Corps of Engineer Monument (H-715-4 and H-716-5) found in the south line of said 23.6 acre tract of land, said point also being the northwest corner of a called 5.02 acre parcel of land described in deed to United States of America, as recorded in Volume 2711, Page 897, Denton County Deed Records;

THENCE continuing along the north line of said 145.3971 acre tract and along the south line of said 5.02 acre tract as follows:

South 37 degrees 10 minutes 02 seconds East, 207.62 feet to a 4-inch pipe post (H-715-4A) found for corner;

South 67 degrees 47 minutes 49 seconds East, 274.76 feet to a 4 inch pipe post (H-715-4B) found for corner;

South 38 degrees 30 minutes 42 seconds East, 153.18 feet to a 4 inch pipe post (H-715-4C) found for corner;

South 00 degrees 38 minutes 55 seconds West, 140.38 feet to a 4 inch pipe post (H-715-4D) found for corner;

North 48 degrees 46 minutes 17 seconds East, 195.29 feet to a 4 inch pipe post (H-715-4E) found for corner;

South 79 degrees 56 minutes 42 seconds East, 264.63 feet to a 4 inch pipe post (H-715-4F) found for corner;

South 63 degrees 48 minutes 55 seconds East, 384.97 feet to a 4 inch pipe post (H-715-4G) found for corner;

South 72 degrees 48 minutes 16 seconds East, 202.01 feet to a 4 inch pipe post (H-715-4H) found for corner;

North 89 degrees 05 minutes 35 seconds East, 543.35 feet to a 4 inch pipe post (H-715-4I) found for corner;

North 87 degrees 29 minutes 32 seconds East, 208.49 feet to a 4 inch pipe post (H-715-4J) found for corner, said point being the southwest corner of said 5.02 acre tract, said point also being in the south line of said 23.6 acre tract;

THENCE South 49 degrees 01 minutes 08 seconds East, 294.86 feet to a U.S. Corps of Engineer Monument (H-715-1 and H-714-14) found at the northeast corner of said 145.3971 acre tract, said point also being the northwest corner of Lot 10, Block A, Lake Country Manor No. 1, an addition in Denton County as recorded in Cabinet D, Page 179, Denton County Plat Records;

THENCE along the east line of said 145.3971 acre tract and the west line of said Lake Country Manor No. 1 as follows:

South 16 degrees 47 minutes 19 seconds West, 328.34 feet to a one and three-quarters inch iron pipe found for corner;

South 11 degrees 56 minutes 46 seconds West, 76.31 feet to a 28 inch Hackberry found for corner;

South 01 degrees 31 minutes 30 seconds West, 1419.26 feet to a point for corner at the southeast corner of said 145.3971 acre tract, from which point bears North 02 degrees 26 minutes 00 seconds East, 29.69 feet to a one-half inch iron rod found at the southwest corner of Lot 1, Block A of said Lake Country Manor No. 1 Addition, said point also being in the approximate centerline of King Road (a 60 foot wide right-of-way);

THENCE along the south line of said 145.3971 acre tract of land as follows:

North 89 degrees 32 minutes 30 seconds West, 2620.12 feet to a "pk" nail set for corner in the approximate centerline of King Road;

North 00 degrees 53 minutes 10 seconds East, 49.52 feet to a point for corner in the north right-of-way line of King Road, from which point a one-half inch iron rod founds bears North 01 degrees 35 minutes 00 seconds East, 2.92 feet;

Northwesterly, 344.98 feet following a curve to the right having a central angle of 36 degrees 24 minutes 14 seconds, a radius of 542.96 feet, a tangent of 178.54 feet, and whose chord bears North 55 degrees 55 minutes 52 seconds West 339.21 feet to the POINT OF BEGINNING and containing 6,333,757 square feet or 145.403 acres of land.

Bearings are based on monuments found along the west line of that called 145.3971 acre parcel of land described in deed to D.R. Horton-Texas, Ltd. as recorded in Document Number 2012-124362, Denton County Deed Records. West line bearing held as North 01 degrees 54 minutes 50 seconds East.

BOUNDARY DESCRIPTION OF THE NORTHWEST CORNER OF LITTLE ELM TRACT, SECTION 16, T4S, R10E, S10E, COUNTY OF DAKOTA, STATE OF NORTH DAKOTA.

THE NORTHWEST CORNER OF THE LITTLE ELM TRACT, SECTION 16, T4S, R10E, S10E, COUNTY OF DAKOTA, STATE OF NORTH DAKOTA, BEING THE INTERSECTION OF THE NORTHWEST CORNER OF THE LITTLE ELM TRACT, SECTION 16, T4S, R10E, S10E, COUNTY OF DAKOTA, STATE OF NORTH DAKOTA, WITH THE NORTHWEST CORNER OF THE LITTLE ELM TRACT, SECTION 16, T4S, R10E, S10E, COUNTY OF DAKOTA, STATE OF NORTH DAKOTA.

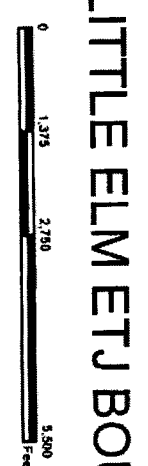
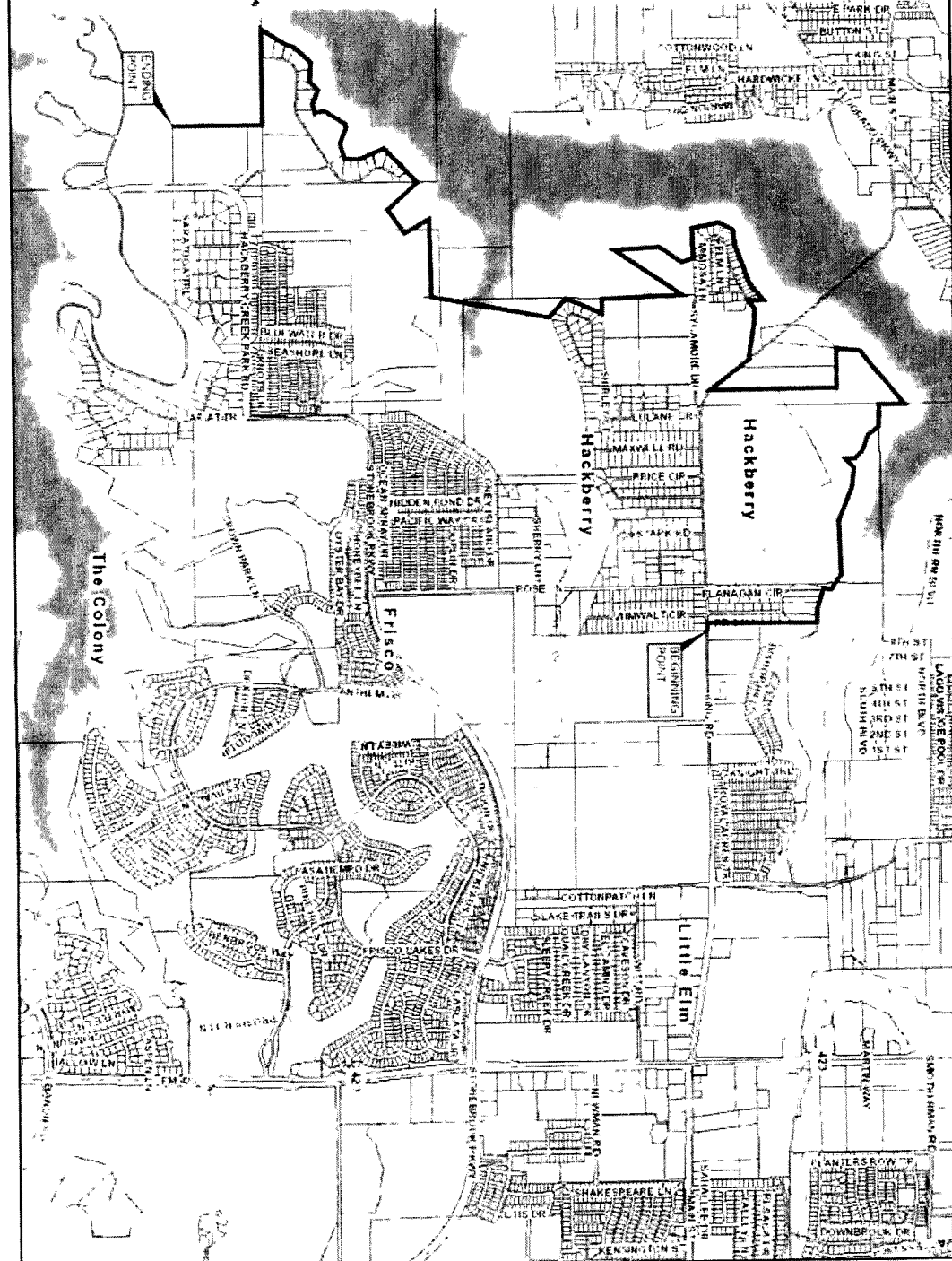
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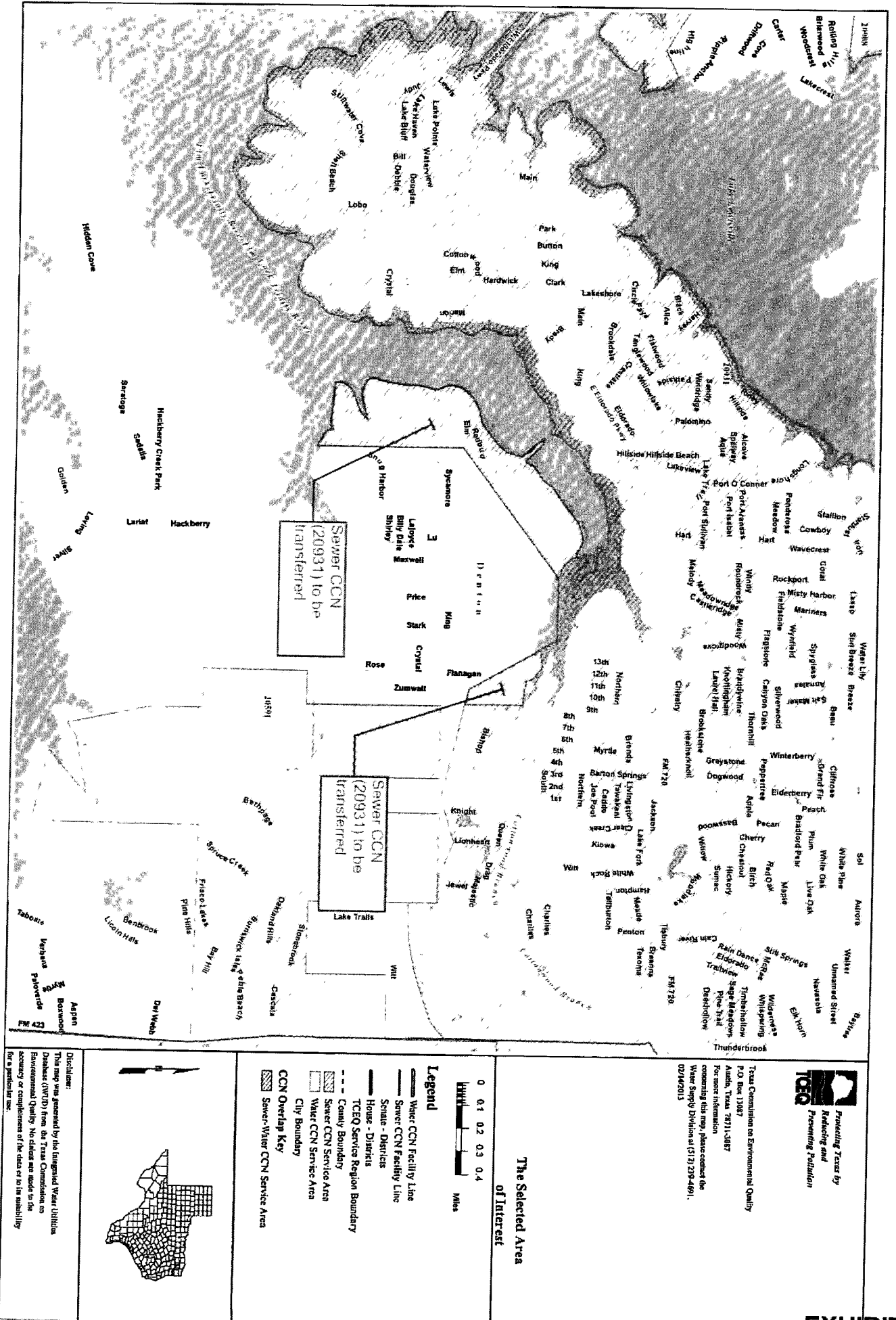


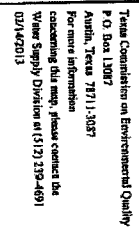
Prepared By:
ETES
INCORPORATED

HACKBERRY/LITTLE ELM ETS BOUNDARY EXHIBIT

SEPTEMBER 27, 2013

This exhibit was prepared from a base map provided by Denton County which does not guarantee the correctness or accuracy of any features shown. This exhibit is a graphic representation of the boundary description provided. The boundary description is based upon information provided by the State of Texas. The boundary description is based upon information provided by the State of Texas. The boundary description is based upon information provided by the State of Texas.
















Protecting Texas by Reducing and Preventing Pollution

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
For more information
concerning this study, please contact the
Water Supply Division at (512) 239-6691
02/14/2013

Miles

- Legend**
-  Water CCN Facility Line
 -  Sewer CCN Facility Line
 -  Senate - Districts
 -  Home - Districts
 -  TCEQ Service Region Boundary
 -  County Boundary
 -  Sewer CCN Service Area
 -  Water CCN Service Area
 -  City Boundary
 -  CCN Overlap Key
 -  Sewer-Water CCN Service Area

Disclaimer:
This map was generated by the Integrated Water Utilization Database (IWUID) from the Texas Commission on Environmental Quality. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use.



EXHIBIT E

The following special development standards apply to the 145.4 acre tract described on Exhibit A to the ETJ and CCN Agreement by and between the City of Hackberry and the Town of Little Elm joined by D.R. Horton-Texas, Ltd. (the "Property") and to that portion of King Road within Hackberry's jurisdiction.

1. King Road:

a. King Road will consist of a ninety foot (90') right-of-way to support a four (4) lane divided roadway. The separation between the east bound and the west bound lanes will be sufficient to accommodate the installation of lefthand turn lanes if needed in the future. In addition, when King is reconstructed it will be consistent with the following specifications: 9" 3500 psi concrete #4 rebar 18" O.C.E.W. with min 8" lime, typically 54lbs/SY.

b. King Road will have at least 10' landscaped buffer along the north side of King Road, running along the Property and outside of the right of way. The buffer should include a perimeter masonry wall and landscape screening together with 6' minimum sidewalks (3500 psi, #3 rebar 18" O.C.E.W., 5" concrete) adjacent to King Road.

c. D.R. Horton - Texas, Ltd. will be responsible for constructing four (4) lanes of King Road along the frontage of the Property and through the intersection of Rose Lane to the east curb return of Rose Lane and King Road. Four (4) lanes will be maintained through the King Road / Rose Lane intersection which could utilize an alternative median width configuration to avoid the existing AT&T equipment located at this intersection. DR Horton/City of Hackberry will reserve land for either option, and plans shall be reviewed by the Town of Little Elm, whose approval should not be unreasonably withheld."

2. The Property:

a. The Property will be platted so as provide access to the tract not currently owned by D.R. Horton-Texas, Ltd. that lies north of and adjacent to the Little Elm Cemetery.

b. The Property will be deed restricted to single family residential use.

c. The common areas of the Property will be maintained by a mandatory homeowner's association created by the developer of the Property prior to the sale of the first developed lot within the Property.

d. With the development of that portion of the Property that is contiguous and adjacent the Little Elm Cemetery, a board on board fence will be constructed separating and screening the Property from the Little Elm Cemetery.

e. If fencing is installed on lot lines along that portion of the Property adjacent to Lake Lewisville, the fencing shall be open and constructed of black, tubular steel.

f. The front lot line of the all lots within the Property will have minimum width or length of fifty feet (50');

g. All fencing with the Property will be constructed with metal poles.

h. The surface of all exterior walls of the first story of all structures within the Property shall be brick veneer. Fifty percent (50%) of the exterior walls of the second story, in any, of all structures shall be brick veneer. The remaining exterior surface of second story may be hardy plank type material.

i. All structures within the Property will comply with Little Elm's 2009 building code and Little Elm's 2008 electrical code.

j. The development of each residential lot will include landscaping that includes grass sod in both of the front and back yards, bushes in the front yard and at least two trees on the lot.

k. The phases of the development on the Property that are adjacent to the lake will provide for access to and construction of ten foot (10') concrete public trail between the lake and the developed lots that complies with the following requirements: benches (Landscape Forms Scarborough - 1 per 500', may be clustered), McCord Trail signage (entry).

l. Interior streets within the Property shall have a minimum width of twenty-seven feet (27'), measured from the back of the curb.