

OFFSITE ROAD AND TRAIL AGREEMENT

This Offsite Road and Trail Agreement ("Agreement") is between the **City of Dripping Springs**, a Type A General Law City located in Hays County, Texas (the "City"), and **SLF IV - Dripping Springs JV, L.P.**, a Texas Limited Partnership, ("Owner").

RECITALS:

WHEREAS, Owner, together with BobWhite Investments, LP, a Texas limited partnership, owns approximately 189 acres of land (the "Land") as shown on **Exhibit A** and more particularly described on **Exhibit B**, which Land is being annexed into the City on this same date; and

WHEREAS, it is intended that the Land will be developed as a master-planned community by Owner, its affiliates and/or their successors and assigns, including future owners and developers (the "Project"); and

WHEREAS, the City approved on the same date as this Agreement that certain "Annexation and Development Agreement" that contains terms and agreements regarding the annexation and development of the Land; and

WHEREAS the Owner wishes to design and construct, or cause to be designed and constructed, an Offsite Road (as hereinafter defined) and Offsite Trail (as hereinafter defined) or wishes to have the option to provide funding for the Offsite Trail in order to provide a special benefit for the proposed development of the Land.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owner agree as follows:

ARTICLE 1 RECITALS

1.1 The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

ARTICLE 2 DEFINITIONS

21 Annexation and Development Agreement: That certain Annexation and Development Agreement executed between Owner and the City on the same date as this Agreement.

22 City Administrator: The chief administrative officer of the City of Dripping Springs, Texas. The term also includes the Deputy City Administrator or the City Administrator's

designee.

- 23 City Council:** The governing body of the City of Dripping Springs, Texas.
- 24 City Engineer:** The person or firm designated by the City Council as engineer for the City of Dripping Springs, Texas.
- 25 City Review Fees:** The fees set out in the City's Fees Schedule Ordinance as may be amended from time to time.
- 26 City Construction Standards:** The following City standards for planning, design, location, and construction of the Offsite Road and Offsite Trail in effect on the date hereof, and as the same may be amended by the cross-sections or design descriptions on **Exhibit C** or **Exhibit D** attached hereto:
- 2.6.1 Subdivision Ordinance and Regulations;
 - 2.6.2 Development Ordinance and Regulations; and
 - 2.6.3 Technical Construction Standards and Specifications.
- 27 Contractor:** A person or entity that constructs the Offsite Road or the Offsite Trail.
- 28 Effective Date:** The date upon which this Agreement is approved by the City.
- 29 Land:** Has the meaning set forth in the Recitals.
- 210 Notice:** Notice as defined in **Section 7.3** of this Agreement.
- 211 Offsite Road:** Has the meaning set forth in Section 3.1.
- 212 Offsite Trail:** Has the meaning set forth in Section 3.2
- 213 Parties:** Parties are the City of Dripping Springs and SLF IV - Dripping Springs JV, L.P., a Texas limited partnership.
- 214 Project:** Has the meaning set forth in the Recitals.

Unless indicated otherwise herein, other capitalized terms in this Agreement shall have the same respective meanings as are ascribed to them in the Annexation and Development Agreement.

ARTICLE 3
DESIGN AND CONSTRUCTION OF OFFSITE ROAD AND OFFSITE TRAIL

3.1 Offsite Road:

- a. The Owner will construct, or cause to be constructed, the offsite section of the Roger Hanks roadway extension from the west property line of the Land, (“Offsite Road”) to match up with the portion of the Roger Hanks roadway extension being constructed by the Dripping Springs Independent School District (“DSISD”), to provide a continuous roadway from the Property to US 290 in the location shown on **Exhibit C**. Construction shall be generally in accordance with the cross-sections and design specifications as shown by **Exhibit C**, subject to plan review and acceptance by the City pursuant to Section 3.6. The Owner will coordinate this effort with the City and with DSISD. The City shall approach DSISD regarding alignment and joint construction of the Roger Hanks Parkway, but whether or not DSISD cooperates, Owner shall be required to construct its portion in accordance with and subject to the terms hereof. Owner may barricade the road at the western property line until DSISD has completed its part. The City shall procure the necessary right of -way for the construction of the Offsite Road. The obligation to construct the Offsite Road is predicated on the first phase of infrastructure of the Project being under construction and the City’s acquisition of the necessary right-of-way. If the Owner is under construction of the first phase of infrastructure of the Project and the City has not acquired the right-of-way, then Owner shall deposit the amount of \$1,914,207.00, which includes a four percent (4%) management fee and a ten percent (10%) contingency, (the “Road Deposit”), in an escrow account for the Offsite Road as provided for in Section 3.1b. Construction of connections of the Offsite Road to streets in the Hidden Springs subdivision shall be the sole responsibility of the City, at no cost to Owner.
- b. On or before the date that Owner begins construction of the first phase of infrastructure for the Project, Owner shall deposit the Road Deposit with the City. The Road Deposit shall be held in a separate trust account by the City for the purpose of constructing the Offsite Road. As Owner constructs the Offsite Road, Owner shall be permitted to draw down on the Road Deposit monthly as construction of the Offsite Road progresses. In order to obtain a draw from the Road Deposit, Owner shall provide the City (i) a draw request describing the work that has been performed; (ii) a certificate from the engineer certifying what work has been done; (iii) a conditional lien waiver from the Contractor; and (iv) with respect to the final draw only, an affidavit of bills paid.
- c. Owner shall be required to commence construction of the Offsite Road at such time as the later to occur of (i) Owner has begun construction of the first phase of infrastructure of the Project; and (ii) the City has acquired all necessary right-of-way to construct the Offsite Road.

- d. In the event that the City has still not been able to acquire all the necessary right-of-way for the Offsite Road on or before the date that construction drawings for the final phase of infrastructure for the Project has been submitted to the City, (the “Construction Obligation Date”) then the Owner may terminate the obligation to construct the Offsite Road, and the City shall be able to use the Road Deposit in order to construct the Offsite Road. So long as the City has not acquired the necessary right-of-way, Owner may elect to terminate its obligation to construct the Offsite Road (pursuant to the preceding sentence) by providing written notice to the City any time after the Construction Obligation Date. In which event the Owner shall obtain and provide to the City a then current cost estimate to complete the Offsite Road. Said estimate shall incorporate findings of a geotechnical study provided by Owner and prepared by a geotechnical engineering firm approved by the City using a professional standard of care typical of design studies for collector roadways in the Dripping Springs area. If the City and Owner agree that the Road Deposit is not sufficient, Owner will deposit any additional funds necessary to increase the Road Deposit by the amount agreed upon by the City and Owner to complete the Offsite Road within thirty (30) days after the parties so agree.

3.2 Offsite Trail.

- a. Owner shall construct or cause to be constructed the offsite trail extension from the Land to Mercer Street, (“Offsite Trail”), in a location mutually agreed upon with the City generally as shown on **Exhibit D** and in accordance with the cross-sections and design specifications attached as **Exhibit D**, subject to the plan review and approval procedure set forth in Section 3.6. Construction shall be subject to the City providing any necessary offsite easements or right -of -way for construction of the Offsite Trail. Owner shall not be required to commence the construction of the Offsite Trail extension until such time as the first phase of infrastructure of the Project is under construction as provided for in Section 3.2 b.
- b. Owner shall be required to commence construction of the Offsite Trail at such time as the later to occur of (i) Owner has begun construction of the first phase of infrastructure on the Project; and (ii) the City has acquired all necessary right-of-way or easements to construct the Offsite Trail.
- c. The Owner has an option to make a Trail Contribution in the amount of \$455,754.00, which includes a four percent (4%) management fee (herein so called) and a ten percent (10%) contingency to the City for the Offsite Trail. If the Owner makes the Trail Contribution to the City prior to the Owner completing the final phase of infrastructure for the Project, then Owner’s obligation to construct the Offsite Trail described in this Section 3.2 shall terminate as long as Owner provides to City a then current cost estimate, in which event, the City shall use the Trail Contribution for the sole purpose of constructing the Offsite Trail, provided, however, if the City obtains other funds to construct the Offsite Trail, then so long as the City constructs the Offsite Trail first, the City may use the Trail Contribution for matching funds for obtaining grant funds for other Trails that service the Property.

- 3.3 **Other Offsite Improvements.** The Traffic Impact Analysis may show the need for other offsite improvements.
- 3.4 **Infrastructure Standards.** The Offsite Road and Offsite Trail shall be planned, designed and constructed in compliance with this **Article 3** and the City Construction Standards that apply to the Land. Owner agrees to engage a professional engineer registered in the State of Texas to provide design phase, bid phase, and construction phase services necessary for the design, bidding, and construction and installation of the Offsite Road and Offsite Trail. Owner shall not be required to publicly bid the project in accordance with all applicable City procedures and the Laws of the State of Texas. However, the Owner will request at least three bids from qualified firms for each construction contract for the Offsite Road and Offsite Trail and to work with the City to provide locally-based, qualified firms access to bidding opportunities as allowed by state law.
- 3.5 **Engagement of Contractor.** Owner shall engage a contractor to construct the Offsite Road and Offsite Trail in accordance with the terms and conditions of this Agreement and with the approved construction plans and specifications. The construction contract shall require that any and all change orders in excess of \$25,000.00 shall be jointly agreed to in writing by the City and the Owner, shall incorporate the requirements of this **Article 3**, and shall provide that the City is a third-party beneficiary of the contract and may enforce such contracts against the Contractor. Change orders must represent an individual change to the contracted work such that large change orders are not subdivided for the sole purpose of arriving at a cost less than \$25,000 for any of the subdivided changes.
- 3.6 **Plan Review, Payment of Fees, and Pre-Construction Conference.** Construction of the Offsite Road and Offsite Trail shall not commence until the plans and specifications have been reviewed and accepted by the City for compliance with the City Construction Standards; a pre-construction conference has been held by the Contractor, the Owner's Engineer, and the City Engineer; and the applicable City Review Fees have been paid. At such pre-construction conference, the City's Engineer shall designate the individual who will serve as the City's project manager and inspector (the "City Inspector").
- 3.7 **Inspection by City.** The City has the right, but not the obligation, to inspect and test the Offsite Road and Offsite Trail at any time. Further, the City has the right to participate in a final inspection of the Offsite Road and Offsite Trail. The Owner, or its Engineer or Contractor, shall notify the City Inspector when each of the Offsite Road and Offsite Trail is ready for final inspection. If the City Inspector concurs that construction of the Offsite Road and/or Offsite Trail is substantially complete, then the City Inspector will schedule a final inspection by the City's Engineer within 15 days. Upon such final inspection and correction of any punch list items, the Owner shall request that City formally accept the improvements, subject to the provisions of this Agreement.

- 3.8 **Easements and Rights-of- Way.** The City will grant or acquire, at no cost to the Owner, all offsite easements or rights-of-way that are required for the installation and operation of the Offsite Road and Offsite Trail. If the City is unable to obtain all required off-site easements or right-of-way, then within 180 days after request by Owner, the City shall attempt to acquire the easements and right-of-way, using its powers of eminent domain if necessary, at City's sole expense; provided specifically that such expenses shall include City staff time for oversight, legal advice and project management; attorneys' fees; survey fees and expenses; appraisal fees and expenses; expert fees and expenses, and all other fees, costs, and expenses associated with the acquisition.

**ARTICLE 4
FEES, PERFORMANCE, PAYMENT
AND MAINTENANCE BONDS**

- 4.1 **Payment of Fees.** Owner shall be responsible for paying to the City all City Review Fees and City Inspection Fees for the Offsite Road and Offsite Trail constructed by Owner as set out in the City's Fee Schedule.
- 4.2 **Payment of Costs.** Except as otherwise provided herein, Owner will pay all costs incurred by Owner associated with the design and construction of the Offsite Road and Offsite Trail and any cost overruns.
- 4.3 **Payment, Performance and Maintenance Bonds.** The City shall require the Owner or Owner's Contractor(s) to provide performance and payment bonds at the time of construction of the Offsite Road and Offsite Trail, as applicable, in accordance with Applicable Rules. Owner or Contractor shall provide a two (2) year maintenance bond upon acceptance by the City.

**ARTICLE 5
OWNERSHIP AND OPERATION OF OFFSITE ROAD AND OFFSITE TRAIL**

- 5.1 Within sixty (60) days after the City's final approval of the Offsite Road or Offsite Trail, and the inspection and correction of punch list items pursuant to Section 3.7 above, City will accept the Offsite Road or Offsite Trail (as applicable).
- (a) The Owner shall provide the City Engineer with a set of as-built Mylar drawings, for permanent record.
- (b) The Owner or Owner's Contractor shall provide the City Administrator or designee with a two year maintenance bond for the Offsite Road or Offsite Trail (as applicable).
- 5.2 All warranties secured for construction of the Offsite Road and all bonds, guarantees, other assurances of performance, record drawings, project manuals, and all other documentation related to the Offsite Road will be delivered to the City. Owner agrees

that the City will not accept the Offsite Road burdened by any mechanic's lien created by, through or under Owner. Owner or Owner's Contractor shall provide a two year maintenance bond for the Offsite Road and Offsite Trail.

- 5.3 After acceptance by the City, the City will operate and maintain the Offsite Road and Offsite Trail according to the City's policies and ordinances, as amended from time to time. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of its road systems nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same.

ARTICLE 6 INSURANCE AND INDEMNIFICATION

- 61 **Insurance.** Owner or its Contractor(s) shall acquire and maintain, during the period of time when any of the Offsite Road or Offsite Trail is under construction by Owner (with full coverage in force for matters occurring prior to City's acceptance of the Offsite Road or Offsite Trail, respectively, until expiration of two (2) years after the latter to occur of full and final completion of the Offsite Road or Offsite Trail and acceptance thereof by the City): (a) workers compensation insurance in the amount required by law and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability (e.g. deletion of exclusions for liability assumed under any indemnification provisions of this Agreement) , with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00 per occurrence and general aggregate coverage for bodily injury, death and property damage of not less than \$2,000,000.00 (per project); provided, however, if the applicable construction contract is for a sum greater than \$3,000,000.00, then either (at Owner's election) the general aggregate coverage for bodily injury, death and property damage shall be no less than \$5,000,000.00 (on a per project basis), or an additional \$3,000,000.00 of umbrella or excess liability insurance shall be acquired and maintained. Such insurance shall cover claims for bodily injury, death and property damage which might arise out of the construction contracts for the Offsite Road and Offsite Trail, whether by Owner, a contractor, subcontractor, material man, or otherwise. Commercial general liability insurance coverage in the amount of \$1,000,000.00 must be on a "per occurrence" basis. All such insurance shall be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do the business of insurance in the State of Texas. The commercial general liability insurance shall name the City including its current and future officers, councilmembers, employees, representatives, and other agents as additional insureds and contain a waiver of subrogation endorsement in favor each additional insured. Upon the later to occur of Owner's execution of a construction contract for the Offsite Road or Offsite Trail or five (5) days prior to commencement of construction under a construction contract for the Offsite Road or Offsite Trail, Owner shall provide to the City certified copies of all declarations, contracts and policies of insurance, including all riders, exclusions, and all other attachments to each, evidencing such insurance coverage, along with the

endorsement naming the City as an additional insured. As to insurance required for current and for future Owners, even where Owner or the insurer has the right to cancel, fail to renew, or modify insurance coverage, each such policy shall provide that, at least thirty (30) days' prior to the cancellation (including for non-payment of premiums), non-renewal or modification of the same, the City and Owner or Owner's contractor shall receive written notice of such cancellation, non-renewal or modification; furthermore, if Owner receives ten (10) days' written notice for non-payment of premiums pursuant to Section 551.053 of the Texas Insurance Code, or if Owner is provided such notice by Owner's contractor, then Owner shall provide such notice to the City within five (5) business days. The commercial general liability insurance discussed in this Section 6.1 will not have exclusions or reduced limits for risks assumed pursuant to this Agreement. If insurance coverage that names a city as an "additional named insured" is commercially available to contractors which would bid for a construction project within the Heritage Subdivision at commercially reasonable rates, then the City shall be named as an "additional named insured" to the insurance policy for such construction project.

62 **DEFENSE, INDEMNIFICATION and HOLD HARMLESS.** THE OWNER (IN THE EVENT OF AN ASSIGNMENT PURSUANT TO SECTION 8.5 BELOW "OWNER" FOR PURPOSES OF THIS SECTION 6.2 SHALL MEAN SUCH ASSIGNEE) HEREBY COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS PAST, PRESENT, AND FUTURE OFFICIALS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND OTHER AGENTS (IN THIS SECTION, COLLECTIVELY THE "CITY") AGAINST AND FROM (AND WILL PAY TO THE CITY OR THE CLAIMANT, AS APPLICABLE, THE AMOUNT OF SUCH DAMAGES TO THE EXTENT THAT PAYMENT OBLIGATIONS UNDER THIS INDEMNITY ARISE) ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE (COLLECTIVELY, "DAMAGES"), ARISING FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY OWNER OR (ii) ANY THIRD PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT CONSTRUCTED BY OWNER ACQUIRED UNDER THIS AGREEMENT, INCLUDING ANY CLAIM RELATING TO THE CONCURRENT OR SOLE NEGLIGENCE OF THE CITY OR RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO PROPERTY RESULTING FROM THE ACTS OR OMISSIONS OF OWNER, ITS CONTRACTOR OR SUBCONTRACTORS, IN OWNER'S CONSTRUCTION OF THE OFFSITE ROAD OR OFFSITE TRAIL FOR THE PROJECT. OWNER WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THE CITY SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER SUBJECT TO THE TERMS AND CONDITIONS OF ANY INSURANCE POLICY APPLICABLE TO SUCH CLAIM AND THE INSURER'S RIGHT TO RETAIN COUNSEL ON BEHALF OF ANY INSURED OR ADDITIONAL INSURED. THE CITY RESERVES THE RIGHT, BUT IS NOT REQUIRED, TO PROVIDE A

PORTION OR ALL OF ITS OWN DEFENSE AT ITS OWN EXPENSE. OWNER SHALL RETAIN DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHTS TO DEFENSE AND INDEMNIFICATION, AND IF OWNER DOES NOT DO SO, THE CITY MAY RETAIN ITS OWN DEFENSE COUNSEL IF REASONABLY NECESSARY AND OWNER WILL BE LIABLE FOR ALL REASONABLE COSTS AND EXPENSES OF SUCH COUNSEL INCURRED UNTIL OWNER HAS RETAINED DEFENSE COUNSEL. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY WITH RESPECT TO MATTERS OCCURRING PRIOR TO CITY'S ACCEPTANCE OF THE OFFSITE ROAD OR OFFSITE TRAIL, RESPECTIVELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW. OWNER WILL NOT SETTLE ANY CLAIM IF SUCH SETTLEMENT PROVIDES FOR INJUNCTIVE OR DECLATORY RELIEF AGAINST THE CITY WITHOUT THE WRITTEN CONSENT OF THE CITY, WHICH SHALL NOT BE UNREASONABLY WITHHELD (CITY SHALL NOT HAVE APPROVAL RIGHTS OVER MONETARY SETTLEMENTS, UNLESS AFFIRMATIVE ACTION IS REQUIRED BY THE CITY IN CONNECTION WITH SUCH SETTLEMENT); HOWEVER, LIMITS ON FUTURE GOVERNMENT ACTION AND PRECEDENTIAL CONSIDERATIONS RELATED TO OR POTENTIALLY ARISING FROM ANY PROPOSED SETTLEMENT ARE AMONG REASONS ON WHICH THE CITY MAY BASE REFUSAL TO CONSENT TO ANY PROPOSED SETTLEMENT.

- 63 At no time shall the City have any control over or charge of the Owner's design, construction, or installation of any of the Offsite Road and Offsite Trail, nor the means, methods, techniques, sequences, or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture between the City and Owner.
- 64 **Insurance and Indemnity by Contractors:** Insurance and Indemnity by Contractors: If Owner engages a Contractor to construct the Offsite Road and/or Offsite Trail, Owner shall include in the contract requirements that the Contractor must provide commercial general liability insurance naming the City as an additional insured as required in Section 6.1. To the extent allowed by applicable law, Owner shall use reasonable efforts to cause the contract to provide THAT THE CONTRACTOR COVENANT AND AGREE, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OF ANY NATURE ARISING OUT OF THE PERFORMANCE OF SUCH CONTRACT, EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO STRICT LIABILITY OR TO THE CONCURRENT NEGLIGENCE OF THE CITY.

ARTICLE 7.
DEFAULT AND REMEDIES FOR DEFAULT

- 7.1 **Preventative Default Measures.** The Parties presently enjoy a good working relationship and understand the meaning and intent of this Agreement; however, the Parties recognize that individual representatives of each of the Parties will likely change over the course of this Agreement. The City agrees that day-to-day oversight of the implementation of this Agreement shall at all times during the Term be assigned directly to the City Administration. In the event of a dispute involving an interpretation or any other aspect of this Agreement, upon Owner's request, the City Administration shall convene a meeting of the Parties as soon as reasonably practical and use all reasonable efforts to avoid processing delays and to resolve the dispute and carry out the spirit and purpose of this Agreement.
- 7.2 **Default.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party arising out of the default, give written notice to the defaulting Party specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.
- 7.3 **Remedies Between the City and Owner.** If a Party contends that the other Party is in default of this Agreement, the non-defaulting Party shall give written notice of such contention to the defaulting Party, specifying the nature of the alleged default, and allow the applicable time period for cure of the default set forth in Section 7.02 above. The defaulting Party shall either cure the alleged default timely, or if the non-defaulting Party and defaulting Party agree in writing for an extension of the time to cure, not later than the extended cure deadline, or, within the time for cure stated in the non-defaulting Party's initial notice of default, give written notice to the non-defaulting Party denying the existence of the alleged default and invoking the following dispute resolution mechanisms. First, if both Parties shall mutually agree to submit to mediation, they shall attempt to resolve the dispute amicably. If mediation is unsuccessful or if one or both of the Parties decline to engage in mediation, then either Party may institute legal proceedings in a state district court in Hays County, Texas, pursuing all available remedies at law or equity, including without limitation a suit for specific performance and/or a Writ of Mandamus in the event of a default by the City. All matters of fact and law shall be submitted to and determined by the court (subject to appeal). Each party shall pay its own costs and attorney fees.

ARTICLE 8 MISCELLANEOUS

- 8.1 **Governing Law; Jurisdiction and Venue:** This Agreement shall be construed under and in accordance with the laws of The State of Texas. All obligations of the parties created hereunder are performable in Hays County, Texas and venue for any action arising hereunder shall be in Hays County.

82 **Conspicuous Provisions:** The City and Owner acknowledge that the provisions of this Agreement set out in **bold, CAPITALS** (or any combination thereof) satisfy the requirements for the express negligence rule or are conspicuous.

83 **Notices:** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To the City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620

Bojorquez Law Firm, PC
12325 Hymeadow Dr., Ste. 2-100
Austin, Texas 78750
Attn: Alan Bojorquez

To Owner:

SLF IV – Dripping Springs JV, L.P.
c/o Stratford Land

5949 Sherry Lane, Suite 800
Dallas, Texas 75225
Attn: Asset Manager

Hudnall P.C.
Attn: Allan Katz
5949 Sherry Lane, Suite 800
Dallas, Texas 75225

Metcalf Wolff Stuart & Williams, LLP
Attn: Steven C. Metcalfe
221 W. 6th, Suite 1300
Austin, Texas 78701

84 **City Consent and Approval:** In any provision of this Agreement that provides for the consent or approval of the City staff or City Council, such consent or approval must be granted in writing, and unless otherwise specified in this Agreement may be withheld or conditioned by the staff or City Council based on compliance with the terms of this Agreement and applicable laws and ordinances.

85 **Assignment:** This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner to (i) an affiliate of Owner or (ii) a subsequent homebuilder of all or a portion of the undeveloped Land within the Project, without the consent of the City, provided that the assignee assumes all of the assigned obligations of Owner hereunder and the assignee has provided Owner with a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. In the event the proposed assignee is a homebuilder that is publicly traded and listed on the New York Stock Exchange, and is a member of either the National Association of Home Builders or Texas Association of Home Builders, then an officer of such proposed assignee shall provide this information in the certification described in this Section 8.5 in lieu of the requirements of item (iii), above. Owner shall provide the City with a copy of the writing described in this Section 8.5.

For assignments other than a homebuilder or an affiliate as provided in the above paragraph, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party provided that the assignee has provided to Owner with a copy to the City in a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. In the event the proposed assignee is a company that is publicly traded and listed on the New York Stock Exchange, then an

officer of such proposed assignee shall provide this information in the certification described in this Section 8.5 in lieu of the requirements of (iii), above. Owner shall provide the City sixty (60) days prior written notice of any such assignment, and Owner shall provide the City with a copy of the writing described in this Section 8.5. Upon assignment pursuant to this Section 8.5, Owner shall be released of any further obligations under this Agreement.

86 **No Third Party Beneficiary:** This Agreement is solely for the benefit of the Parties, and neither the City nor Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City and Owner.

87 **Amendment:** This Agreement may be amended only with the written consent of the Owner and with approval of the governing body of the City.

88 **No Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

89 **Severability:** 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, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.

810 **Captions:** Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the agreement.

811 **Interpretation:** The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term "shall include" means "shall include without limitation."

812 **Exactions Roughly Proportionate:** Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code, arising out of this Agreement. Both Owner and the City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement or the future zoning ordinance covering the Land. Owner further acknowledges that the benefits of platting and master planning have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Owner acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. Notwithstanding the foregoing, Owner does not waive any of its rights or claims with respect to any future requests or exactions from the City not covered or determined by this Agreement or the future zoning ordinance covering the Land.

813 **Counterpart and Originals:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

814 **Term.** The term of this Agreement will commence on the Effective Date and continue until the City's acceptance of the Offsite Road (or earlier termination of Owner's obligation to construct the Offsite Road pursuant to Section 3.1(d) above) and Offsite Trail (or earlier termination of Owner's obligation to construct the Offsite Trail pursuant to Section 3.2(c) above), unless terminated on an earlier date by written agreement of the City and Owner.

815 **Incorporation of Exhibits by Reference:** All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A Depiction of Land

Exhibit B Legal Description of Land

Exhibit C General Location and Cross-Section/Design Specifications for Offsite Road

Exhibit D General Location and Cross-Section/Design Specifications Offsite Trail

The Effective Date of this Agreement is October 17th, 2017.

[Signature Pages to follow]

THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT:

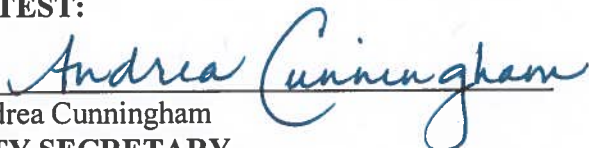


CITY OF DRIPPING SPRINGS,
a Type A General-Law Municipality

By: 
Todd Purcell

MAYOR

ATTEST:


By: 
Andrea Cunningham
CITY SECRETARY

SLF IV – Dripping Springs JV, L.P.,
a Texas limited partnership

By: SLF IV Property GP, LLC,
a Texas limited liability company,
its General Partner

By: Stratford Land Fund IV, L.P.
a Delaware limited partnership,
its Co-Managing Member

By: Stratford Fund IV GP, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: Mark Westerburg
Title: Vice President



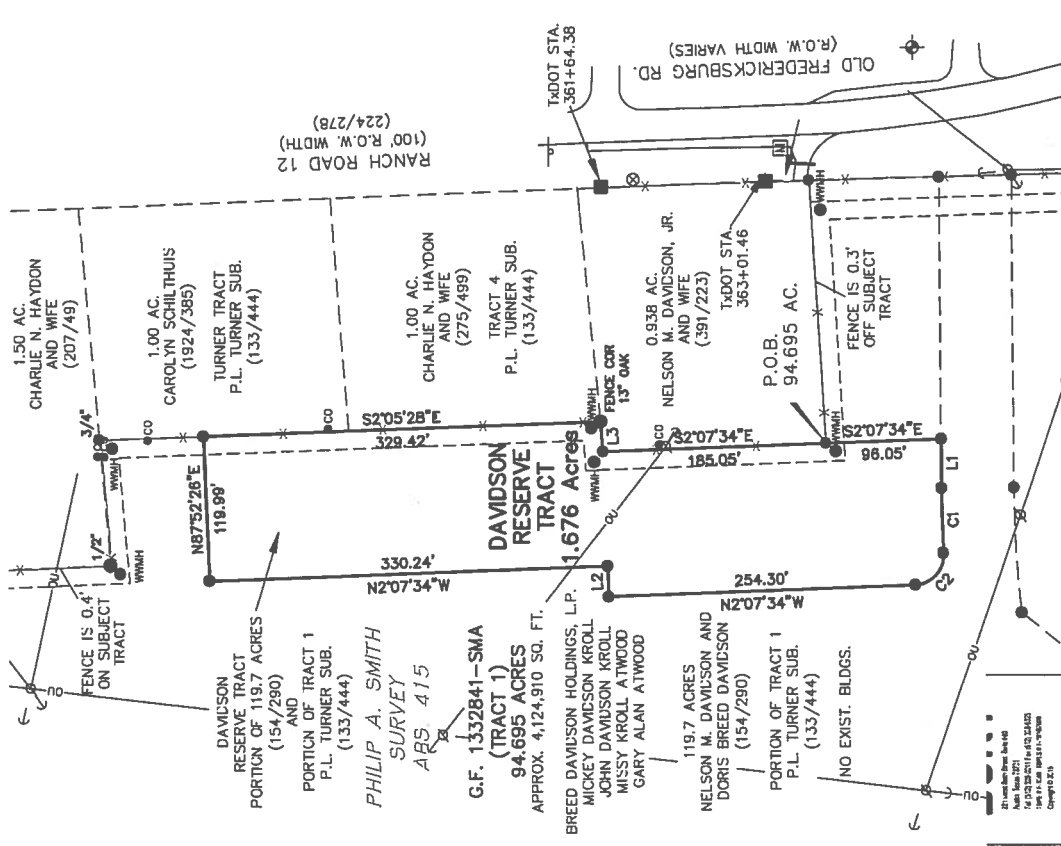
BURY
 Surveying & Mapping
 10000 Highway 100, Suite 100
 Dallas, Texas 75243
 Phone: 972.343.8888
 Fax: 972.343.8889
 www.bury.com



NOTE:
 Per exhibit A1 - tracts 1-4 are owned by SLF IV - Dripping Springs JV, LP and
 tract 5 is owned by Bobwhite Investments, LP

Exhibit A - Property owned by SLF IV - Dripping Springs JV, LP

Planned Development District No. 5 Heritage Subdivision Dripping Springs, TX 18 April 2016



PARCEL LINE DATA			PARCEL CURVE DATA					
LINE #	BEARING	DISTANCE	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	BEARING
L1	S89°48'55\"W	40.73'	C1	53.84'	1030.00'	2°59'42\"	53.84'	S88° 19' 04.23\"W
L2	N87°52'26\"E	25.11'	C2	39.73'	25.00'	91°03'12\"	35.68'	N47° 39' 10.83\"W
L3	S85°58'06\"W	24.91'						

NOTE:
 Per exhibit A1 - trActs 1-4 Are owNed by SLF IV - DRIPPING Springs IV, LP AND
 trAct 5 IS owNed by bobwHite INVeStmeNtS, LP



T B G Exhibit A - ProPerty owNed by bobwHite INVeStmeNtS, LP

Planned Development District No.5 Heritage Subdivision Dripping Springs, TX 18 April 2016

**EXHIBIT B
"Property"**

TRACT 1:

A DESCRIPTION OF 34.247 ACRES IN THE PHILIP SMITH SURVEY, ABSTRACT 415, HAYS COUNTY, TEXAS, BEING A PORTION OF A 34.29 ACRE TRACT CONVEYED TO JOHN MARCUS BAIRD BY DEED DATED JANUARY 13, 1993 AND RECORDED IN VOLUME 971, PAGE 116 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 34.247 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar found for the southeast corner of the said 34.29 acre tract, being also the northeast corner of a 10.11 acre tract described in Volume 3444, Page 347 of the Official Public Records of Hays County, Texas, and being in the west line of Tract 1 of the P.L. Turner Subdivision, a subdivision of Record in Volume 133, Page 444 of the Deed Records of Hays County, Texas;

THENCE with the south line of the 34.29 acre tract, being also the north line of the 10.11 acre tract, the following four (4) courses and distances:

1. South 81°14'08" West, a distance of 397.32 feet to a 1/2" rebar with Chaparral cap set;
2. South 84°24'01" West, a distance of 7.97 feet to a 1/2" rebar found;
3. South 85°19'17" West, a distance of 78.51 feet to a fence post found;
4. South 37°56'47" West, a distance of 97.35 feet to a 1/2" rebar found for the northwest corner of the 10.11 acre tract, being also the northeast corner of Lot 3 of Burrows Subdivision, a subdivision of record in Book 15, Page 69 of the Plat Records of Hays County, Texas;

THENCE with the south line of the 34.29 acre tract, being also the north line of Burrows Subdivision, the following four (4) courses and distances:

1. South 82°29'22" West, a distance of 88.75 feet to a nail found;
2. South 79°25'37" West, a distance of 76.64 feet to a nail found in a live oak for the northwest corner of Lot 3, being also the northeast corner of Lot 2;
3. South 81°55'21" West, a distance of 126.68 feet to a 1/2" rebar with a 3984 cap found for the northwest corner of Lot 2, being also the northeast corner of Lot 1;

4. South 81°56'23" West, a distance of 126.62 feet to a 1/2" rebar found for the northwest corner of Lot 1, being also the northeast corner of a 2.107 acre tract described in Volume 2840, Page 300 of the Official Public Records of Hays County, Texas;

THENCE continuing with the south line of the 34.29 acre tract, being also the north line of the 2.107 acre tract, the following two (2) courses and distances:

1. South 82°31'24" West, a distance of 142.51 feet to a nail found in a live oak;
2. South 81°27'49" West, a distance of 160.55 feet to a 1/2" rebar found for the northwest corner of the 2.107 acre tract, being also the northeast corner of Lot 1 of Sportsplex Subdivision No. 1, a subdivision of record in Book 7, Page 157 of the Plat Records of Hays County, Texas;

THENCE continuing with the south line of the 34.29 acre tract, being also the north line of Lot 1, the following two (2) courses and distances:

1. South 78°46'14" West, a distance of 283.22 feet to a 5/8" rebar found;
2. South 87°33'15" West, a distance of 75.24 feet a 1/2" rebar found for the northwest corner of Lot 1, being in the east line of Sportsplex Drive, described in Volume 784, Page 217 of the Deed Records of Hays County, Texas;

THENCE with the east line of Sportsplex Drive, crossing the 34.29 acre tract the following two (2) courses and distances:

1. With a curve to the left, having a radius of 309.60 feet, a delta angle of 14°55'01", an arc length of 80.60 feet, and a chord which bears North 67°03'32" West, a distance of 80.38 feet to a calculated point;
2. North 74°27'23" West, a distance of 19.74 feet to a calculated point in the center of a road, being in the west line of the 34.29 acre tract;

THENCE with the west line of the 34.29 acre tract, 25' from and parallel to the east line of a 20.518 acre tract described in Volume 784, Page 210 of the Deed Records of Hays County, Texas, the following six (6) courses and distances:

1. North 15°32'13" East, a distance of 7.31 feet to a calculated point;
2. North 14°52'44" East, a distance of 170.09 feet to a calculated point;
3. North 42°12'50" East, a distance of 247.76 feet to a calculated point;
4. North 34°57'13" East, a distance of 299.47 feet to a calculated point;
5. North 35°47'18" East, a distance of 429.51 feet to a calculated point;

6. North 43°12'18" East, a distance of 469.74 feet to a 1/2" rebar with Chaparral cap set for the northwest corner of the 34.29 acre tract, from which a 1/2" rebar with Zamorra Warrick Associates cap found for the northeast corner of the 20.518 acre tract, bears South 89°12'58" West, a distance of 34.79 feet;

THENCE North 89°12'58" East, with the north line of the 34.29 acre tract, a distance of 764.65 feet to a 1/2" rebar found for the northeast corner of the 34.29 acre tract, being also in the west line of said Tract 1;

THENCE with the east line of the 34.29 acre tract, being also the west line of Tract 1, the following two (2) courses and distances:

1. South 01°00'24" West, a distance of 791.82 feet to a nail in a fence post found;
2. South 01°57'23" West, a distance of 240.27 feet to the **POINT OF BEGINNING**, containing 34.247 acres of land, more or less.

TRACT 2:

A DESCRIPTION OF 50.206 ACRES IN THE PHILIP SMITH SURVEY, ABSTRACT 415, HAYS COUNTY, TEXAS, BEING A PORTION OF A TRACT CALLED THE EAST PART OF 152.47 ACRES CONVEYED TO JOHN MARCUS BAIRD BY GENERAL WARRANTY DEED DATED MAY 9, 1978 AND RECORDED IN VOLUME 310, PAGE 718 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, SAME BEING A PORTION OF A 152.47 ACRE TRACT CONVEYED TO EDNA EARL BAIRD BY DEED DATED FEBRUARY 19, 1937 AND RECORDED IN VOLUME 154, PAGE 59 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 50.206 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an axle found for the northeast corner of the said 152.47 acre tract, being an angle point in the south line of Tract 76 A-1, Replat of the Remainder of Tract 76A, Springlake and Subdivision of Reed Acreage, a subdivision of record in Book 9, Page 47 of the Plat Records of Hays County, Texas;

THENCE South 00°16'33" West, with the east line of the 152.47 acre tract, being a south line of said Tract 76 A-1, a distance of 70.71 feet to a fence post found for an angle point in the south line of Tract 76 A-1, for the northwest corner of a tract of land described in Volume 130, Page 231 of the Deed Records of Hays County, Texas;

THENCE South 02°57'28" West, with the east line of the 152.47 acre tract, and with the west line of a 2 acre tract described in Volume 130, Page 231, and Volume 1658, Page 147 of the Official Public Records of Hays County, Texas, a distance of 174.43 feet to fence post found for the southwest corner of the 2 acre tract, being also the northwest corner of Tract 1 of the P.L. Turner Subdivision, a subdivision of Record in Volume 133, Page 444 of the Deed Records of Hays County, Texas;

THENCE with the east line of the 152.47 acre tract, being the west line of Tract 1, with the fence, the following five (5) courses and distances:

1. South 02°48'03" West, a distance of 431.51 feet to a calculated point;
2. South 02°54'13" West, a distance of 484.14 feet to a calculated point;
3. South 02°03'04" West, a distance of 259.80 feet to a calculated point;
4. South 01°35'37" West, a distance of 300.57 feet to a calculated point;
5. South 01°07'29" West, a distance of 353.19 feet to a 1/2" rebar found for the northwest corner of a 34.29 acre tract described in Volume 971, Page 116 of the Deed Records of Hays County, Texas;

THENCE South 89°12'58" West, with the north line of the 34.29 acre tract, over and across the 152.47 acre tract, a distance of 764.65 feet to a 1/2" rebar with Chaparral cap set for the northwest corner of the 34.29 acre tract, being in the division line of the 152.47 acre tract described in Volume 310, Page 718 and Volume 310, Page 721 of the Deed Records of Hays County, Texas;

THENCE South 89°12'58" West, continuing across the 152.47 acre tract, with the said division line, a distance of 34.79 feet to a 1/2" rebar with Zamorra Warrick Associates cap found for the northwest corner of a 20.518 acre tract described in Volume 784, Page 210 of the Deed Records of Hays County, Texas;

THENCE South 89°12'49" West, with the north line of the 20.518 acre tract, with the said division line, a distance of 196.26 feet to a fence post found for the southeast corner of a 45.53 acre tract described in Volume 2953, Page 181 of the Official Public Records of Hays County, Texas;

THENCE with the east line of the 45.53 acre tract, with the said division line, crossing the 152.57 acre tract, the following four (4) courses and distances:

1. North 01°23'38" West, a distance of 440.21 feet to a 1/2" rebar with Carson Bush cap found;
2. North 00°57'16" West, a distance of 525.11 feet to a nail found at the base of a 13" and 14" live oak;
3. North 09°31'45" West, a distance of 154.92 feet to a 1/2" rebar with Chaparral cap set;
4. North 01°24'08" West, a distance of 484.34 feet to a 1/2" rebar found for the northeast corner of the 45.53 acre tract, being also the southeast corner of Lot 18 of Hidden Springs

Ranch Section II, a subdivision of record in Book 14, Page 69 of the Plat Records of Hays County, Texas;

THENCE with the east line of Hidden Springs Ranch Section II, continuing with the said division line, crossing the 1.52.57 acre tract, the following five (5) courses and distances:

1. North 01°22'12" West, a distance of 155.30 feet to a nail found in concrete;
2. North 15°23'51" East, a distance of 18.43 feet to a 1/2" rebar found;
3. North 03°04'23" West, a distance of 27.45 feet to a 1/2" rebar with 4404 cap found for the northeast corner of Lot 18, being also the southeast corner of Lot 17;
4. North 02°18'43" West, a distance of 190.70 feet to a 1/2" rebar with 4542 cap found for the northeast corner of Lot 17, being also the southeast corner of Lot 14;
5. North 01°02'42" West, a distance of 50.06 feet to an axle found for an angle point in the north line of the 152.47 acre tract, being also the southwest corner of Tract 76 A-1;

THENCE North 87°50'05" East, with the north line of the 152.47 acre tract, being also the south line of Tract 76 A-1, a distance of 1141.82 feet to the POINT OF BEGINNING, containing 50.206 acres of land, more or less.

TRACT 3:

A DESCRIPTION OF 94.695 ACRES (APPROX. 4,124.910 SQ. FT.) IN THE PHILIP SMITH SURVEY, ABSTRACT 415, HAYS COUNTY, TEXAS, BEING A PORTION OF A 119.7 ACRE TRACT CONVEYED TO NELSON M. DAVIDSON AND DORIS BREED DAVIDSON BY DEED DATED JUNE 23, 1952 AND RECORDED IN VOLUME 154, PAGE 290 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF TRACT 1, P.L. TURNER SUBDIVISION, A SUBDIVISION OF RECORD IN VOLUME 133, PAGE 444 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 94.695 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2" rebar with 3984 cap found in the west line of Old Fredericksburg Road (right-of-way width varies), for the northeast corner of the Doris Breed Davidson Subdivision, a subdivision of record in Book 10, Page 395 of the Plat Records of Hays County, Texas;

THENCE North 01°30'02" West, with the west line of Old Fredericksburg Road, across Tract 1, a distance of 425.26 feet to a 1/2" rebar with Chaparral cap set for the POINT OF BEGINNING;

THENCE over and across Tract 1, the following four (4) courses and distances:

1. South 89°48'55" West, a distance of 259.27 feet to a 1/2" rebar with Chaparral cap set;

2. With a curve to the left, having a radius of 970.00 feet, a delta angle of 06°06'33", an arc length of 103.43 feet, and a chord which bears South 86°45'39" West, a distance of 103.38 feet to a 1/2" rebar with Chaparral cap set

3. South 38°42'22" West, a distance of 192.59 feet to a 1/2" rebar with Chaparral cap set;
4. South 00°43'30" West, a distance of 587.78 feet to a 1/2" rebar with Chaparral cap set in the north line of a 9,008 acre tract described in Volume 2102, Page 453 of the Official Public Records of Hays County, Texas, from which a 1/2" rebar with 3984 cap found in the north line of the 9,008 acre tract, for the southwest corner of the Doris Breed Davidson Subdivision, bears North 87°06'31" East, a distance of 205.48 feet;

THENCE South 87°06'31" West, with the north line of the 9,008 acre tract, continuing across Tract 1, a distance of 304.58 feet to a 1/2" rebar found for the northwest corner of the 9,008 acre tract;

THENCE South 07°58'13" West, with the west line of the 9,008 acre tract, continuing across Tract 1, a distance of 1318.37 feet to a nail in concrete found for the southwest corner of the 9,008 acre tract, being also in the north line of a 6.38 acre tract described in Volume 1489, Page 391 of the Official Public Records of Hays County, Texas, for an angle point in the east line of Tract 1;

THENCE South 13°58'09" West, with the east line of Tract 1, being also the west line of the 6.38 acre tract, a distance of 743.78 feet to a 1/2" rebar with 3984 cap found for the southeast corner of Tract 1, being also the southwest corner of the 6.38 acre tract, and being in the north line of a 3.91 acre tract described in Volume 269, Page 226 of the Deed Records of Hays County, Texas;

THENCE South 88°04'18" West, with the south line of Tract 1, being also the north line of the 3.91 acre tract, a distance of 101.94 feet to a nail found in a 6" post for the northwest corner of the 3.91 acre tract, being also the apparent northeast corner of a 6 acre tract described in Volume 110, Page 563 of the Deed Records of Hays County, Texas;

THENCE North 89°32'58" West, with the south line of Tract 1, being also the apparent north line of the 6 acre tract, a distance of 152.30 feet to a fence post found for the apparent northwest corner of the 6 acre tract, and being a northeast corner of the 76.73 acre tract described in Volume 124, Page 515 of the Deed Records of Hays County, Texas;

THENCE South 89°52'25" West, with the south line of Tract 1, being also the north line of the 76.73 acre tract, distance of 311.97 feet to a fence post found for the southwest corner of Tract 1, being an angle point in the east line of the 76.73 acre tract;

THENCE North 01°40'35" East, with the west line of Tract 1, being also the east line of the 76.73 acre tract, a distance of 550.52 feet to a 1/2" rebar found for the northeast corner of the

76.73 acre tract, being also the southeast corner of a 10.11 acre tract described in Volume 3444, Page 347 of the Official Public Records of Hays County, Texas;

THENCE North 01°55'45" East, with the west line of Tract 1, being also the east line of the 10.11 acre tract, a distance of 660.61 feet to a 1/2" rebar found for the northeast corner of the 10.11 acre tract, being also the southeast corner of a 34.29 acre tract described in Volume 971, Page 116 of the Deed Records of Hays County, Texas;

THENCE with the west line of Tract 1, being also the east line of the 34.29 acre tract, the following two (2) courses and distances:

1. North 01°57'23" East, a distance of 240.27 feet to a nail in fence post found;
2. North 01°00'24" East, a distance of 791.82 feet to a 1/2" rebar found for the northeast corner of the 34.29 acre tract, being in the east line of a 152.47 acre tract described in Volume 310, Page 718 of the Deed Records of Hays County, Texas;

THENCE with the west line of Tract 1, being the east line of the 152.47 acre tract, with the fence, the following five (5) courses and distances:

1. North 01°07'29" East, a distance of 353.19 feet to a calculated point;
2. North 01°35'37" East, a distance of 300.57 feet to a calculated point;
3. North 02°03'04" East, a distance of 259.80 feet to a calculated point;
4. North 02°54'13" East, a distance of 484.14 feet to a calculated point;
5. North 02°48'03" East, a distance of 431.51 feet to a fence post found for the northwest corner of Tract 1, being the southwest corner of a 2 acre tract described in Volume 130, Page 231 of the Deed Records of Hays County, Texas;

THENCE North 86°52'58" East, with the north line of Tract 1, being also the south line of the 2 acre tract, a distance of 1245.48 feet to a fence post found for the northwest corner of a 7.749 acre tract described in Volume 374, Page 743 of the Deed Records of Hays County, Texas;

THENCE South 02°29'58" East, with the west line of the 7.749 acre tract, over and across Tract 1, a distance of 390.22 feet to a 1/2" iron pipe found for the southwest corner of the 7.749 acre tract, being also the northwest corner of a 1.50 acre tract described in Volume 207, Page 49 of the Deed Records of Hays County, Texas;

THENCE South 02°17'26" East, with the west line of the 1.50 acre tract, continuing across Tract 1, a distance of 208.99 feet to a 1/2" iron pipe found for the southwest corner of the 1.50 acre tract;

THENCE North 85°08'49" East, with the south line of the 1.50 acre tract, continuing across Tract 1, a distance of 104.25 feet to a 3/4" rebar found for an angle point in the east line of Tract 1, being also the northwest corner of a 1.00 acre tract described in Volume 1924, Page 385 of the Deed Records of Hays County, Texas, and being the northwest corner of the Turner Tract as shown on the plat of said P.L. Turner Subdivision;

THENCE South 02°05'28" East, with the east line of Tract 1, being also the west line of the 1.00 acre tract, the Turner Tract, a 1.00 acre tract described in Volume 275, Page 499 of the Deed Records of Hays County, Texas, and the west line of Tract 4 of said P.L. Turner Subdivision, a distance of 86.45 feet to a 1/2" rebar with Chaparral cap set, from which a fence corner at a 13" live oak for the southwest corner of the 1.00 acre tract, being also the southwest corner of Tract 4, and being in the north line of a 0.938 acre tract described in Volume 391, Page 223 of the Deed Records of Hays County, Texas, bears South 02°05'28" East, a distance of 329.42 feet;

THENCE over and across Tract 1, the following eight (8) courses and distances:

1. South 87°52'26" West, a distance of 119.99 feet to a 1/2" rebar with Chaparral cap set;
2. South 02°07'34" East, a distance of 330.24 feet to a 1/2" rebar with Chaparral cap set;
3. South 87°52'26" West, a distance of 25.11 feet to a 1/2" rebar with Chaparral cap set;
4. South 02°07'34" East, a distance of 254.30 feet to a 1/2" rebar with Chaparral cap set;
5. With a curve to the left, having a radius of 25.00 feet, a delta angle of 91°03'12", an arc length of 39.73 feet, and a chord which bears South 47°39'11" East, a distance of 35.68 feet to a 1/2" rebar with Chaparral cap set;
6. With a curve to the right, having a radius of 1030.00 feet, a delta angle of 02°59'42", an arc length of 53.84 feet, and a chord which bears North 88°19'04" East, a distance of 53.84 feet to a 1/2" rebar with Chaparral cap set;
7. North 89°48'55" East, a distance of 40.73 feet to a 1/2" rebar with Chaparral cap set;
8. North 89°48'55" East, a distance of 217.16 feet to a 1/2" rebar with Chaparral cap set in the west right-of-way line of Old Fredericksburg Road, from which a 1/2" rebar found in the west right-of-way line of Old Fredericksburg Road, for the southeast corner of a 0.938 acre tract described in Volume 391, Page 223 of the Deed Records of Hays County, Texas, bears North 01°30'02" West, a distance of 108.46 feet;

THENCE South 01°30'02" East, with the west right-of-way line of Old Fredericksburg Road, crossing Tract 1, a distance of 60.02 feet to the **POINT OF BEGINNING**, containing 94.695 acres of land, more or less.

TRACT 4:

A DESCRIPTION OF 8.119 ACRES (APPROX. 353,664 SQ. FT.) IN THE PHILIP SMITH SURVEY, ABSTRACT 415, HAYS COUNTY, TEXAS, BEING A PORTION OF A 9.008 ACRE TRACT CONVEYED TO MICKEY DAVIDSON KROLL, NELSON M. DAVIDSON, JR. AND WIFE, BARBARA WATKINS DAVIDSON BY WARRANTY DEED WITH VENDOR'S LIEN DATED NOVEMBER 7, 2002 AND RECORDED IN VOLUME 2102, PAGE 453 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF TRACT 1, P.L. TURNER SUBDIVISION, A SUBDIVISION OF RECORD IN VOLUME 133, PAGE 444 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 8.119 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2" rebar, being an angle point in the east line of the said 9.008 acre tract, being also the northeast corner of Tract 3 of the said P.L. Turner Subdivision, and being also the southwest corner of a 0.754 acre tract described in Volume 4258, Page 404 of the Official Public Records of Hays County, Texas, and being also the northwest corner of a 1 acre tract described in Volume 144, Page 563 of the Deed Records of Hays County, Texas, from which a 3/4" iron pipe found for the southeast corner of the 0.754 acre tract, being in the north line of the 1 acre tract, and being in the west line of Old Fredericksburg Road (right-of-way width varies), bears North 87°52:37" East, a distance of 216.79 feet;

THENCE South 87°35:26" West, with the common line of the 9.008 acre tract and Tract 3, a distance of 236.90 feet to a 1/2" rebar found for an angle point in the east line of the 9.008 acre tract, being also the northwest corner of Tract 3, for the **POINT OF BEGINNING**;

THENCE with the common line of the 9.008 acre tract and Tract 3, the following two (2) courses and distances:

1. South 15°43:23" West, a distance of 521.70 feet to a 1/2" rebar found at the northwest corner of a 3.59 acre tract out of Tract 3, described in Volume 4073, Page 818 of the Official Public Records of Hays County, Texas;
2. South 15°32:41" West, with the west line of the 3.59 acre tract, a distance of 499.23 feet to a 2" iron pipe found for an angle point in the east line of the 9.008 acre tract, being also the southwest corner of the 3.59 acre tract, being also the southwest corner of Tract 3, and being in the north line of a 2.07 acre tract described in Volume 178, Page 571 of the Deed Records of Hays County, Texas;

THENCE with the common line of the 9.008 acre tract and the 2.07 acre tract, the following two (2) courses and distances:

1. North 89°33:06" West, a distance of 183.84 feet to a 1/2" rebar found for an angle point in the east line of the 9.008 acre tract, for the northwest corner of the 2.07 acre tract;

2. South 09°15:30" West, a distance of 216.46 feet to a nail found in an 18" live oak for the southwest corner of the 2.07 acre tract, being also the southeast corner of the 9.008 acre tract, and being in the north line of a 6.39 acre tract described in Volume 1489, Page 391 of the Official Public Records of Hays County, Texas;

THENCE North 89°25:09" West, with the south line of the 9.008 acre tract, being also the north line of the 6.38 acre tract, a distance of 53.15 feet to a nail in concrete found for the southwest corner of the 9.008 acre tract;

THENCE North 07°58:13" East, with the west line of the 9.008 acre tract, crossing said Tract 1, a distance of 1318.37 feet to a 1/2" rebar found for the northwest corner of the 9.008 acre tract;

THENCE North 87°06:31" East, with the north line of the 9.008 acre tract, crossing said Tract 1, a distance of 304.58 feet to a 1/2" rebar with Chaparral cap set, from which a 1/2" rebar with 3984 cap found for the southwest corner of the Doris Breed Subdivision, a subdivision of record in Book 10, Page 395 of the Plat Records of Hays County, Texas, bears North 87°06:31" East, a distance of 205.48 feet;

THENCE over and across the 9.008 acre tract, the following two (2) courses and distances:

1. South 00°43:30" West, a distance of 129.06 feet to a 1/2" rebar with Chaparral cap set;
2. North 87°20:25" East, a distance of 61.68 feet to the **POINT OF BEGINNING**, containing 8.119 acres of land, more or less.

TRACT 5:

A DESCRIPTION OF 1.676 ACRES (APPROX. 73,006 SQ. FT.) IN THE PHILIP SMITH SURVEY, ABSTRACT 415, HAYS COUNTY, TEXAS, BEING A PORTION OF A 119.7 ACRE TRACT CONVEYED TO NELSON M. DAVIDSON AND DORIS BREED DAVIDSON BY DEED DATED JUNE 23, 1952 AND RECORDED IN VOLUME 154, PAGE 290 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF TRACT 1, P.L. TURNER SUBDIVISION, A SUBDIVISION OF RECORD IN VOLUME 133, PAGE 444 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 1.676 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2" rebar found in the west right-of-way line of Old Fredericksburg Road, for the southeast corner of a 0.938 acre tract described in Volume 391, Page 223 of the Deed Records of Hays County, Texas;

THENCE South 86°32:57" West, with the south line of the said 0.938 acre tract, a distance of 218.28 feet to a 1/2" rebar found at the southwest corner of the 0.938 acre tract for the **POINT OF BEGINNING**;

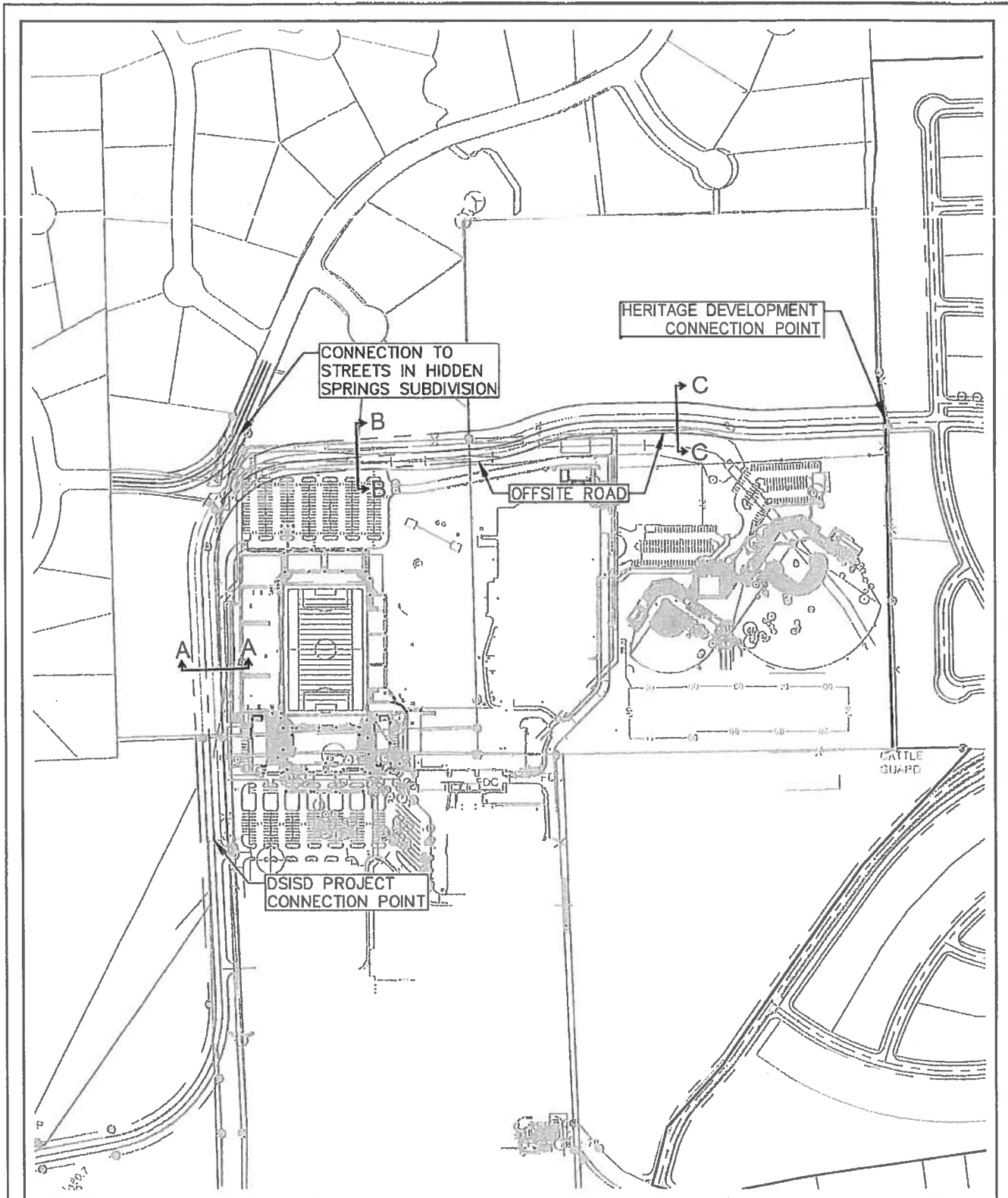
THENCE crossing Tract 1, the following eight (8) courses and distances:

1. South 02°07'34" East, a distance of 96.05 feet to a 1/2" rebar with Chaparral cap set;
2. South 89°48'55" West, a distance of 40.73 feet to a 1/2" rebar with Chaparral cap set;
3. With a curve to the left, having a radius of 1030.00 feet, a delta angle of 02°59'42", an arc length of 53.84 feet, and a chord which bears South 88°19'04" West, a distance of 53.84 feet to a 1/2" rebar with Chaparral cap set;
4. With a curve to the right, having a radius of 25.00 feet, a delta angle of 91°03'12", an arc length of 39.73 feet, and a chord which bears North 47°39'11" West, a distance of 35.68 feet to a 1/2" rebar with Chaparral cap set;
5. North 02°07'34" West, a distance of 254.30 feet to a 1/2" rebar with Chaparral cap set;
6. North 87°52'26" East, a distance of 25.11 feet to a 1/2" rebar with Chaparral cap set;
7. North 02°07'34" West, a distance of 330.24 feet to a 1/2" rebar with Chaparral cap set;
8. North 87°52'26" East, a distance of 119.99 feet to a 1/2" rebar with Chaparral cap set in the east line of Tract 1, being also the west line of a 1.00 acre tract described in Volume 1924, Page 385 of the Deed Records of Hays County, Texas, and being the northwest corner of the Turner Tract as shown on the plat of said P.L. Turner Subdivision, from which a 3/4" rebar found for an angle point in the east line of Tract 1, being also the northwest corner of a 1.00 acre tract, bears North 02°05'28" West, a distance of 86.45 feet;

THENCE South 02°05'28" East, with the east line of Tract 1, being also the west line of the 1.00 acre tract, the Turner Tract, a 1.00 acre tract described in Volume 275, Page 499 of the Deed Records of Hays County, Texas, and the west line of Tract 4 of said P.L. Turner Subdivision, a distance of 329.42 feet to a fence corner at a 13" live oak for the southwest corner of the 1.00 acre tract, being also the southwest corner of Tract 4, and being in the north line of a 0.938 acre tract described in Volume 391, Page 223 of the Deed Records of Hays County, Texas;

THENCE South 85°58'06" West, with the north line of the 0.938 acre tract, crossing Tract 1, a distance of 24.91 feet to a 1/2" rebar found for the northwest corner of the 0.938 acre tract;

THENCE South 02°07'34" East, with the west line of the 0.938 acre tract, continuing across Tract 1, a distance of 185.05 feet to the POINT OF BEGINNING, containing 1.676 acres of land, more or less.



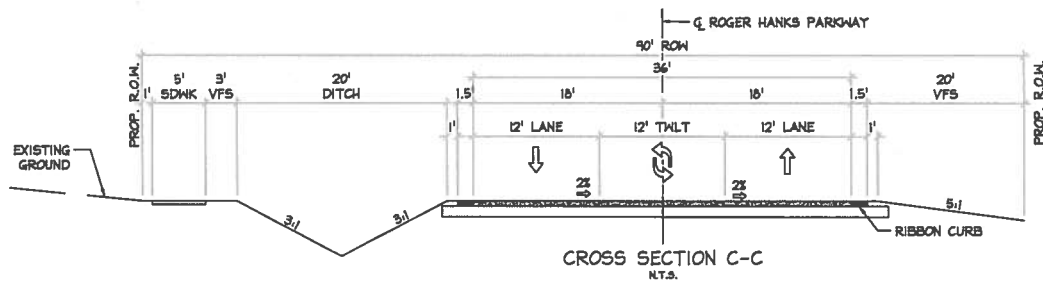
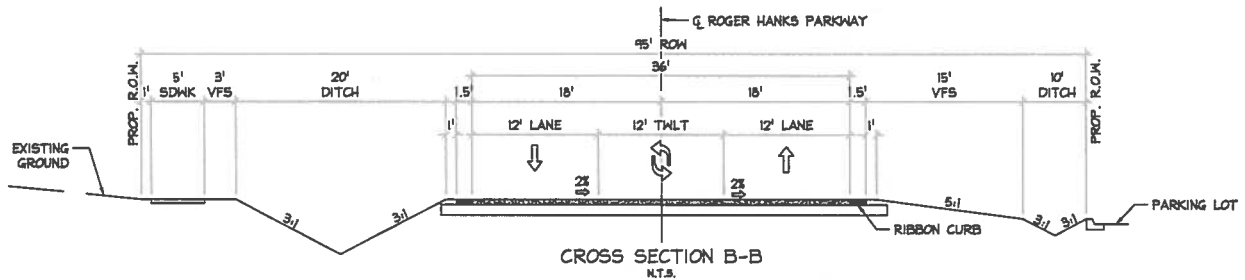
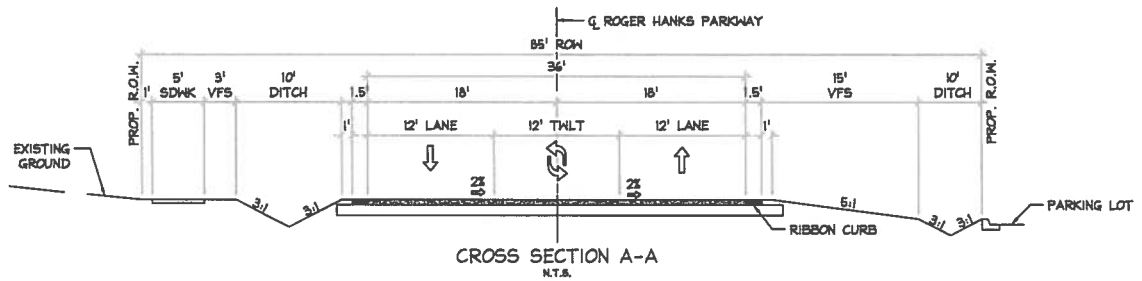
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STRATFORD LAND

**OFFSITE ROAD
 GENERAL LOCATION
 AND CROSS SECTIONS
 EXHIBIT C
 PAGE 1 OF 2**

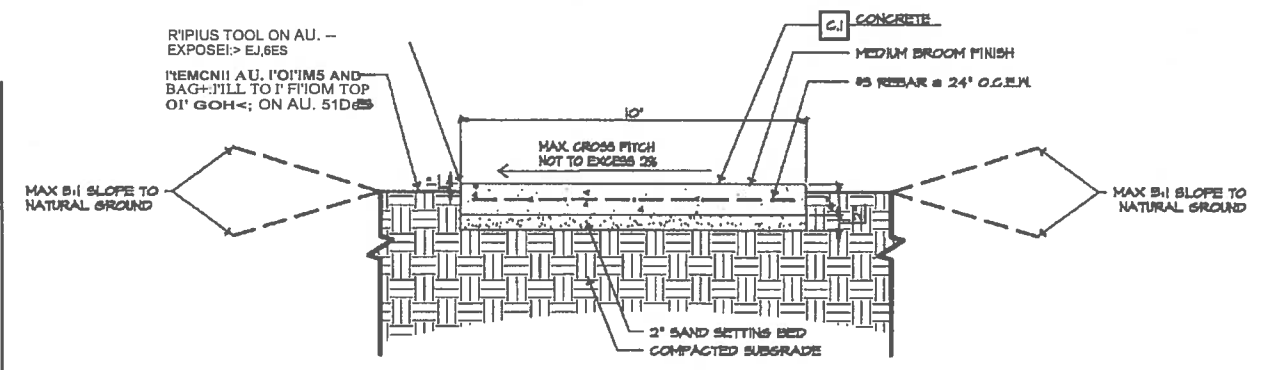


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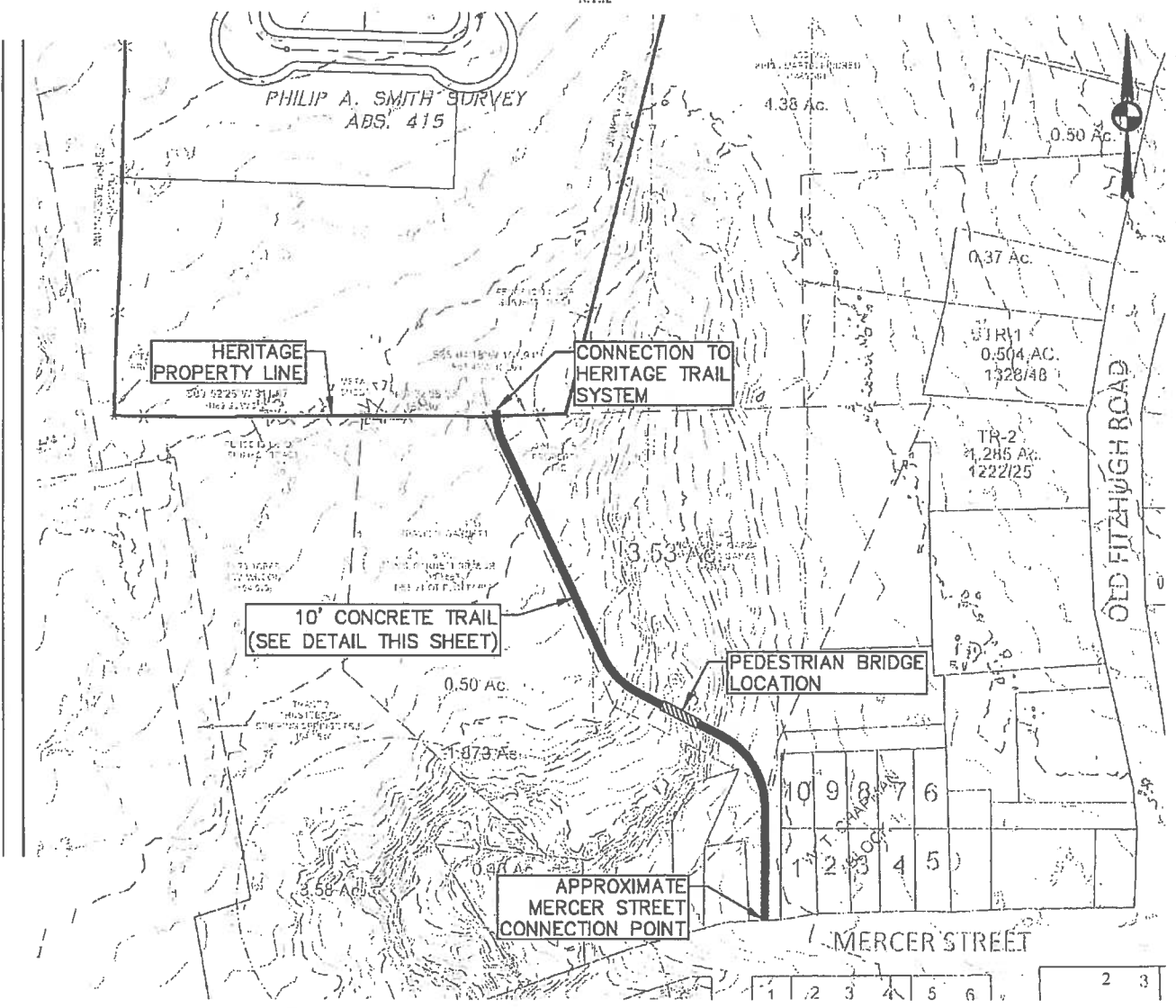
HERITAGE
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STRATFORD LAND

OFFSITE ROAD
GENERAL LOCATION
AND CROSS SECTIONS
EXHIBIT C
PAGE 2 OF 2



TRAIL CROSS SECTION
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OFFSITE TRAIL
 GENERAL LOCATION
 AND CROSS SECTION
 EXHIBIT D