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Linda C. Fritsche
County Clerk
San Marcos, Texas 78666



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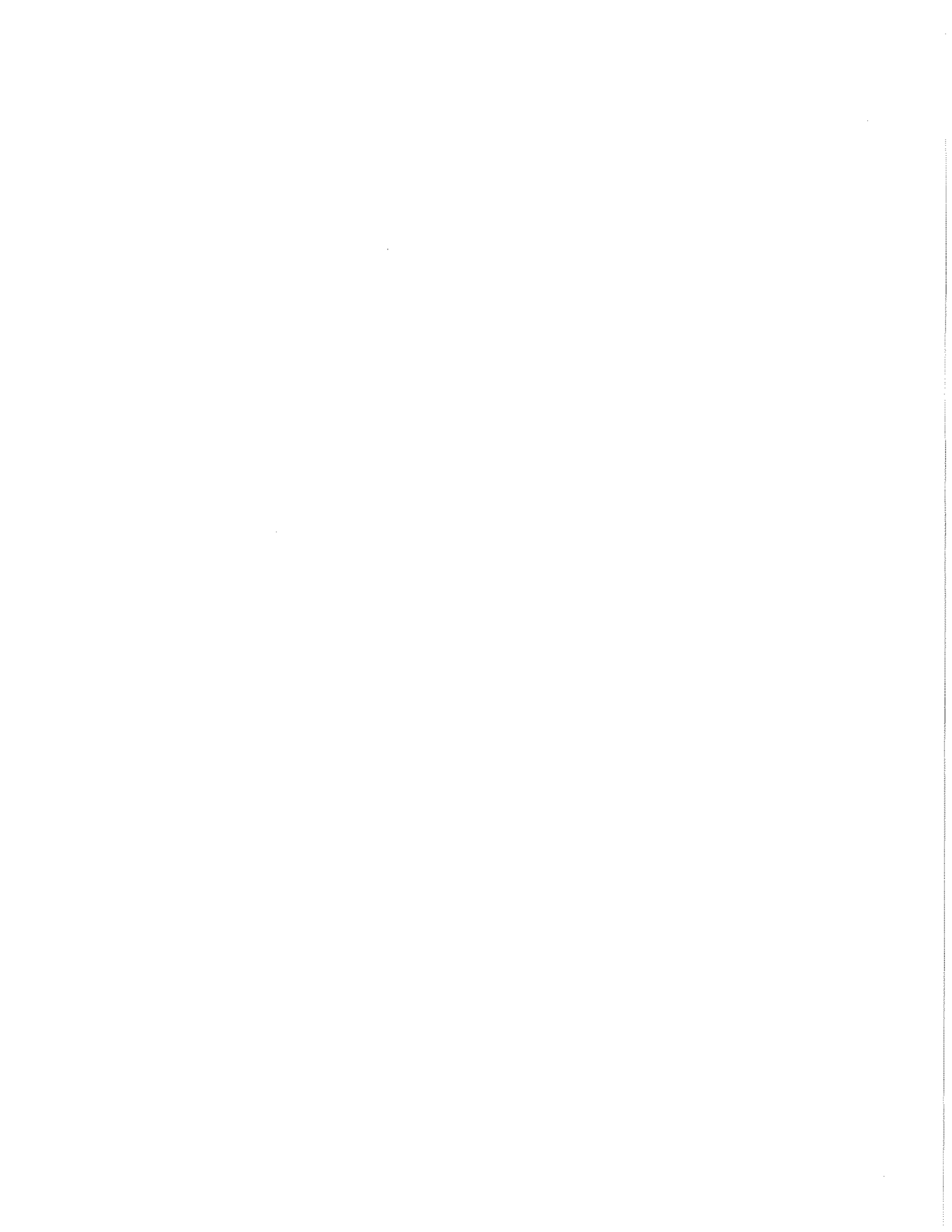
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Linda C. Fritsche, County Clerk





Driftwood
DEVELOPMENT AGREEMENT

Between the
City of Dripping Springs
&
**M. Scott Roberts, Individually,
and Driftwood Equities, Ltd.**

October 16, 2007

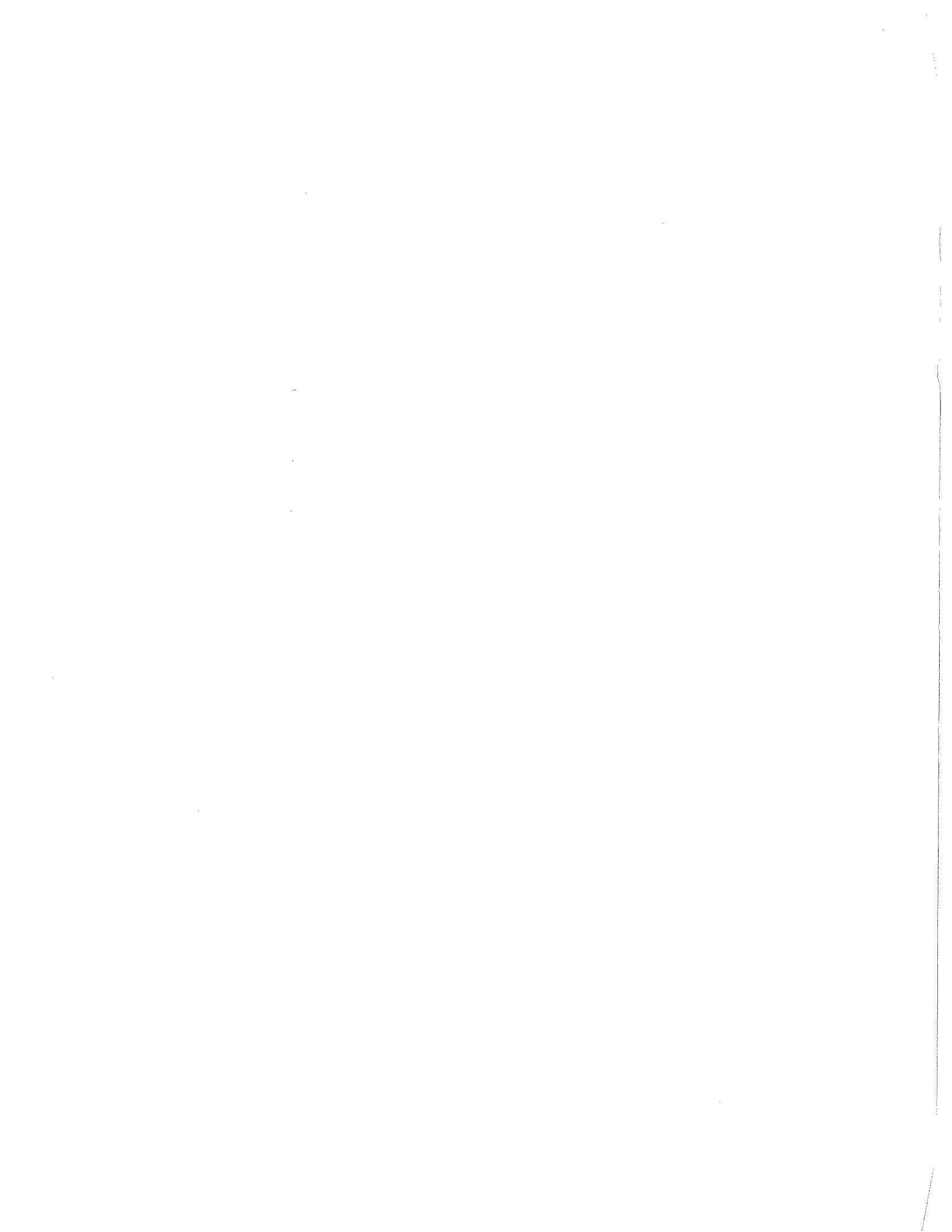
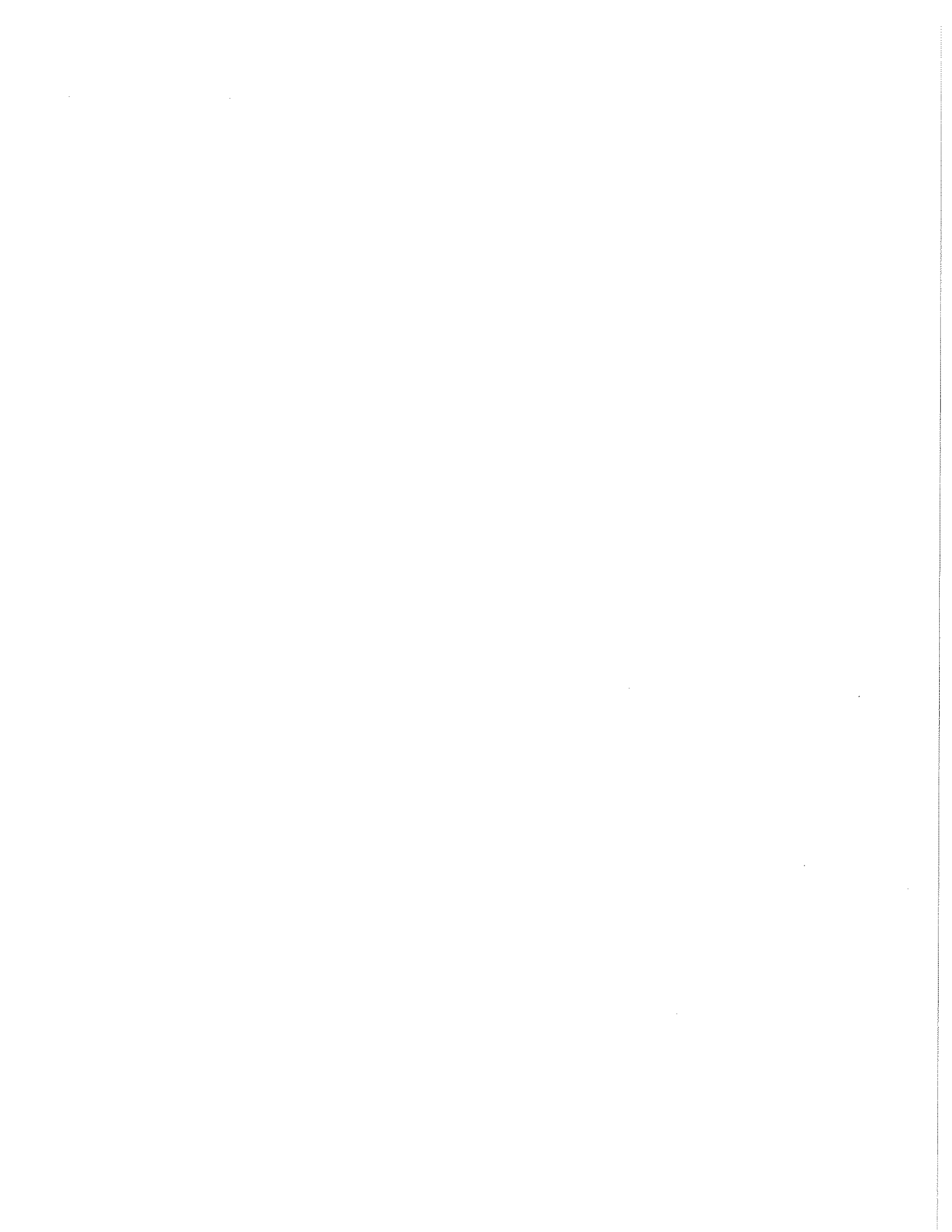


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STATE OF TEXAS §
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Driftwood

DEVELOPMENT AGREEMENT

This Driftwood Development Agreement (“Agreement”) is between the City of Dripping Springs, (the “City”), and M. Scott Roberts, Individually, and Driftwood Equities, Ltd. (“Owners”). In this Agreement, the City and Owners are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”.

RECITALS:

- WHEREAS,** Owners own approximately 539.12 acres of land (the “Property”) located wholly within the extraterritorial jurisdiction (ETJ) of the City and in Hays County, Texas (the “County”), which is more fully described in *Exhibit A* attached hereto; and
- WHEREAS,** Owners intend to develop the Property as a master-planned, mixed-use community that will provide for residential, commercial, civic, recreational and agricultural uses, together with open space and environmental preservation areas; and
- WHEREAS,** the development will include facilities and uses that will attract and serve tourists and visitors to the area; and
- WHEREAS,** the City has adopted an Interim Comprehensive Plan to guide the City in planning for future growth and development and the City Council finds that this Development Agreement is consistent with the Interim Comprehensive Plan and that any variances granted herein are consistent with the intent of the Interim Comprehensive Plan; and
- WHEREAS,** the City has determined that development agreements with developers of master-planned communities such as the Project will benefit the City by establishing land use controls; providing for the construction of appropriate and necessary utility, roadway and drainage infrastructure; encouraging economic development, protecting the environment, preserving native habitat and endangered species; and promoting the welfare of the citizens of the City and its ETJ; and

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WHEREAS, the City and Owners are striving to achieve balance between the pressures of urbanization and the shared desires to protect the public safety, and conserve the hill country scenery and native habitat; and

WHEREAS, this Agreement grants the Owners a measure of predictability in terms of applicable municipal regulations and development fees; and

WHEREAS, this Agreement grants the City the public benefits related to the application of certain municipal regulations in the ETJ, including building codes, zoning categorizations, lighting and landscaping regulations and exterior design standards for non-residential structures, as specified within this Agreement; and

WHEREAS, Owners and the City wish to enter into this Agreement to provide an alternative to the City's typical regulatory process for development; encourage innovative and comprehensive master-planning of the Property; provide a level of certainty of regulatory requirements throughout the term of this Agreement; and provide assurances of a high-quality development that will benefit the present and future residents of the City, the City's ETJ and the County; and

WHEREAS, the City is statutorily authorized to enter into such agreements with owners of property located in the City's ETJ pursuant to Texas Local Government Code Section 212.172; and

WHEREAS, this Agreement runs with the land, and thus shall be filed in and among the land records of Hays County, and is binding upon subsequent purchasers of the Property, or any portions thereof; and

WHEREAS, the City has conducted numerous public hearings and received broad public input regarding the proposal contained within this Agreement.

NOW THEREFORE, FOR GOOD & VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owners agree as follows:

ARTICLE 1. DEFINITIONS

1.1. General

Words and phrases used in this Agreement shall have the meanings set forth in this section. Terms that are not defined below, but are defined in the City's Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and *vice versa*); and words in the masculine gender shall include the feminine gender (and *vice*

versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

1.2. Specific

Agreement: This contract between the City of Dripping Springs, Texas and Owners, including all Exhibits, which are incorporated herein for all intents and purposes.

Applicable Fees: The fees and charges to be paid by Owners to the City with respect to the development of the Property.

Applicable Rules: The City Rules that, as modified by the Project Approvals and variances granted concurrent with this Agreement, if any, exist on the Effective Date of this Agreement and will be applicable to the development of the Property for the term of this Agreement. This term does not include regulations mandated by state law, or that are necessary to prevent imminent harm to human safety or property, which may be modified and made applicable to the Project even after the Effective Date.

Association: A community group that is organized with respect to the Property in which individual owners of lots share common interests and responsibilities for costs and upkeep of common space or facilities. A group may take the form of a Property Owners Association or Home Owners Association. The Project may allow for more than one Association.

Building Code: Collectively, the most recent versions of the City's Building Code.

Casitas: A one bedroom unit for daily/temporary rental or timeshare vacation use.

City: The City of Dripping Springs, an incorporated Type A, general-law municipality located in Hays County, Texas.

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

City Council: The governing body of the City of Dripping Springs, Texas.

City Engineer: The person or firm designated by the City Council as the engineer for the City of Dripping Springs, Texas.

City Rules: The entirety of the City's ordinances, regulations and official policies, except as modified by this Agreement.

Conceptual Plan: The conceptual plan of the Project attached as *Exhibit B*, as it may be amended from time to time in accordance with this Agreement.

County: Hays County, Texas.

Effective Date: The date upon which this Agreement is executed by all Parties.

Impervious Cover Percentage: The percentage calculated by dividing the total acres of impervious cover on the Property by the total number of acres included in the Property. Whether or not outdoor decks are included in the calculation of impervious cover shall be determined by the City Engineer during the Site Plan review process based on the deck design and materials. Whether decomposed granite trails, parking areas or other low traffic use areas covered with decomposed granite shall be considered impervious cover shall be determined by the City Engineer during the Site Plan review process.

LCRA: The Lower Colorado River Authority, or its successor agencies.

LEED Program: The Leadership in Energy and Environmental Design (LEED) program. Single family home builders shall meet the requirements of the LEED program and commercial builders shall meet the requirements of the LEED silver program, as administered through the City of Dripping Springs or its agents.

Master Plan: The master plan of the City, originally presented in 1984, as may be amended, modified or supplemented by the City, in conjunction with the Interim Comprehensive Plan.

Open Space: A tract of real property not occupied by any structures or impervious surfaces except as otherwise provided for in this Agreement and legally restricted from future development. Open space uses may include active or passive recreation as well as agricultural use. Property within the confines of individual residential lots shall not qualify as open space under this agreement. Portions of the Project proposed as open space are generally displayed in *Exhibit B* and in more detailed in *Exhibit B-1*.

Owners: M. Scott Roberts, individually, and Driftwood Equities, Ltd., and any successors and assigns.

P&Z: The Planning and Zoning Commission, a volunteer citizen advisory board of the City of Dripping Springs that has been granted specific land use and development regulatory authority pursuant to City ordinances and state statutes.

Project: The Property, as it will be developed under this Agreement pursuant to the Conceptual Plan, attached as *Exhibit B*, subject to Owners' ability to change the Conceptual Plan as set out elsewhere in this Agreement, including, without limitation, Section 3.6 below.

Project Approvals: The approvals, waivers, variances and exceptions to the Applicable Rules approved by the City with respect to the development of the Property.

Property: Approximately 539.12 acres of land, in Hays County, Texas, more fully described on the attached *Exhibit A*.

Recreation: Leisure time activities. Active Recreation involves active or energetic activities that are often performed with others, involves the use of equipment, and takes place at prescribed places, sites or fields (e.g., playground activities, swimming, tennis, and track).

Passive Recreation involves activities that are relatively inactive or less energetic (e.g., board games, picnicking, and walking).

TCEQ: Texas Commission on Environmental Quality, or its successor agencies.

TxDOT: Texas Department of Transportation, or its successor agencies.

Texas Parks & Wildlife Department: An agency of the State of Texas, or its successor agency.

US Army Corps of Engineers: An agency of the United States, or its successor agency.

ARTICLE 2. PUBLIC BENEFITS, INFRASTRUCTURE & AMENITIES

- 2.1. **Orderly Growth:** The City desires that development within its ETJ occur in an orderly manner in order to protect the health, safety and welfare of the City's present and future citizens; preserve the environment; enhance property values; and provide for expansion of the City's tax base. This Agreement will benefit the City by facilitating the development of a master-planned community within an appropriate area of the City's ETJ which will allow for thoughtful and high-quality planning, the development of necessary roadways and utility facilities, and the development of a balanced community that includes residential, commercial, agricultural, entertainment, civic and recreational uses. Through this Agreement, the City is furthering its land planning objectives by imposing in the ETJ, components of the City's rules for Zoning, Lighting, Building, Signs and Landscaping.
- 2.2. **Economic Development:** The development of the Project as a master-planned, mixed-use community will benefit the City by providing new employment and an expanded job market for the residents of the City and its ETJ; furthering the development of an expanded commercial tax base at such time as annexation should occur; and increasing the services that will be available to residents of the City and its ETJ.
- 2.3. **Provision of Housing:** The development of the Property under this Agreement is intended to provide high quality housing for the City's present and future citizens and, as contemplated by the City's Interim Comprehensive Plan, to allow the development of housing that will minimize negative environmental impacts and promote the aesthetic enhancement of the City and its ETJ. Further, the development of housing in accordance with this Agreement will promote safe and attractive housing conditions and a self-sustaining community.
- 2.4. **Water & Wastewater Infrastructure:**
 - 2.4.1 Water for the single-family portion of the Project and for potable use in the commercial areas is to be provided under a contract with the LCRA.

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- (a) Groundwater will be used for agricultural irrigation and makeup water for water quality wet ponds. Water for nonpotable commercial uses may be from either the LCRA or from groundwater. Appropriate authorizations for such groundwater use will be obtained from the Hays Trinity Groundwater Conservation District.
- 2.4.2. Wastewater service for single-family residential development will be provided by on-site sewage facilities meeting the standards set by the City, Hays County and the TCEQ. Select commercial uses will require use of a centralized wastewater collection and treatment system (spa and lodge for example). Specialty retail uses in the Town Center may not warrant a centralized system. The most appropriate wastewater systems(s) for commercial areas will be determined as specific uses are finalized. Such wastewater systems will comply with all applicable regulations. Owners agree to construct and operate a Class 1 system.
- 2.4.3. Owners will stub out a water line to the edge of Owners' Western common boundary with each of the four (4) immediately adjoining properties on Christina Lane so that the adjoining property owners may connect. Any such connections will be at the sole expense of the adjoining property owners.
- 2.5. **Vineyard Water Sources:** In light of the inherent limitations of the capacity of the Trinity Aquifer in this area, Owners commit to using best efforts to reduce reliance on the aquifer for agricultural purposes. Priorities for vineyard irrigation are:
- (a) **Beneficial reuse of wastewater:** Owners will use their best efforts to amend the existing TCEQ discharge permit to allow the effluent to be used for vineyard irrigation. Any future permits requested will also incorporate such request.
 - (b) **Surface water:** Owners shall apply to LCRA and TCEQ for a permit to divert surface water from Onion Creek to irrigate the vineyards.
 - (c) **Storm Water:** Owners shall use best efforts to use stormwater captured in rainwater harvesting systems or water quality ponds for vineyard irrigation. The need to empty the ponds and rainwater systems in a short time period in anticipation of the next rainfall event may render this approach unfeasible.
 - (d) **Groundwater:** Groundwater shall be the lowest priority for vineyard irrigation but will be needed much of the time.
- The above priorities are voluntary and should not be construed to contradict the fact that groundwater for agricultural purposes is an exempt use according to HTGCD rules.
- 2.6. **Recreation & Tourism:** The City has, in its Interim Comprehensive Plan, established goals of increasing the availability of park and recreational facilities to serve the residents of its communities, and enhancing the attractiveness of the City as a tourist destination. The development of the Project, as contemplated by this Agreement, will further these City goals in the following ways:

- (a) The Project itself will attract residents and visitors to the area to experience a unique mixed use development that incorporates vineyards, up-scale residential, large creek-side natural areas, specialty retail, restaurants, an extensive trail system, a winery and a spa and lodge complex.
- (b) The low density of the Project and use of appropriate architectural styles will help retain the Hill Country character of the Driftwood area.
- (c) The vineyards and winery will enhance the reputation of the Driftwood area as a destination for the increasing number of tourists who appreciate wine.
- (d) The lodge, spa, casitas and fine dining complex in a natural setting will provide a destination experience for corporate retreats, weddings and other events, as well as for casual visitors drawn to the area.
- (e) The specialty retail shops in the Town Center will draw visitors and enhance the economic vitality of the area.
- (f) The extensive trail system, wholly and partially available to residents/patrons and public visitors, respectively, will provide an opportunity for both active and passive recreational pursuits.
- (g) The access to and protection of Onion Creek will draw people to the area and provide a greater appreciation for this asset of the region.
- (h) Protection of large areas of open space along Onion Creek preserves wildlife habitat for birding and other nature-oriented activities.

2.7. **Open Space:** The Project will include approximately 215.37 acres of open space, including greenbelts, irrigation, agricultural uses and conservation easements. The title to the agricultural areas may be retained by the Owners. The balance of the open space will be conveyed to an Association.

2.7.1. **Operation & Maintenance:** The operation and maintenance of the agricultural areas will be the responsibility of the Owners. Operation of the remainder of the open space areas will be the responsibility of the Association.

2.7.2. **Public Access:** The primary use and enjoyment of the open space will be limited to the future residents of the Project and those using the commercial facilities of the Project. Designated public access to portions of the open space will be limited to areas immediately adjacent to the Town Center, as displayed in *Exhibit B-1*. Public access to those areas displayed in *Exhibit B-1* shall be limited as set forth in Section 2.7.4. This limitation of public access is not intended to contravene state law regarding public access to waters of the state.

2.7.3. **Amenities:** In keeping with the intent of preserving the natural environment to the maximum extent feasible the amenities provided in the open space will largely be limited to hike and bike trails and other passive uses. Up to a maximum of five acres of open space may be cleared and maintained for picnicking and other recreational activities, including covered pavilions or similar structures with total roof areas not to exceed twenty thousand square feet.

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- 2.7.4 **Parkland Dedication:** The large amount of open space set aside by the Project and the provision for public access to portions of the open space satisfy the City's Parkland Dedication Ordinance. Owners will be dedicating a public easement upon thirty-three (33) acres of open space as displayed in Exhibit B-1. Public access to this open space shall be limited to designated hiking trails. More widespread public access is inappropriate as this area serves important water quality protection function. The fragile nature of the native vegetation requires that public access be limited to ensure the health of the native grasses and their ability to provide water quality protection.
- 2.8. **Fees :** in consideration of the City's covenants and concessions contained within this Agreement, and in order to assure that the City does not incur uncompensated expenses in connection with this Agreement and the development of the Property under this Agreement, Owners agree to pay to City certain development fees (as herein defined) as follows:
- 2.8.1. **Administrative & Professional Fee:** Owners agree to pay the Development Agreement fees in accordance with the City's Ordinance currently in effect.
- 2.8.2. **Platting Fees:** In order to cover the City's administrative and professional costs related to plat review and approval under this Agreement, Owners agree to pay the City platting fees in accordance with the City's ordinances presently in effect.
- 2.8.3. **Miscellaneous Fees:** Any fees not specifically addressed under this Agreement shall be imposed in accordance to the City fee schedule applicable at the time of application for the specific authorization sought. Examples of miscellaneous fees not addressed under this Agreement include, but are not limited to, fees related to authorizations for signs, re-plat, plat amendments, or zoning changes. The Project will only be subject to fees not specifically addressed in this Agreement if the fees were being assessed uniformly in the City and its ETJ on the Effective Date of this Agreement. This section does not apply to fees mandated by changes in state or federal law. The Parties may negotiate a fee for any amendment of this Agreement.
- 2.9. **Environmental Protection:** Owners shall comply with the following natural resource laws and regulations, to the extent applicable:
- 2.9.1. **Aquifer Protection:** The Project lies within the Barton Springs Segment of the contributing zone to the Edwards Aquifer. As a condition for receiving LCRA water the Project will comply with water quality measures designed to assure protection of that segment of the Edwards Aquifer consistent with the provisions of the Memorandum of Understanding between the LCRA and the U.S. Fish and Wildlife Service. Moreover, Owners will comply with all applicable TCEQ regulations, including but not limited to Edwards Aquifer Rules, 30 TAC 213, as may be amended, to the extent applicable to the Property. Owners shall also take reasonable measures to protect the Trinity Aquifer, to the extent applicable to the Property, including at a minimum adherence to the above-cited Edwards Aquifer Rules.

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- 2.9.2. **Land Application Restrictions:** In the event a centralized wastewater collection and treatment system is constructed, Owners agree that any TCEQ permit application will be based on irrigation of the effluent and will not propose a discharge of effluent to waters of the state. Irrigation may be above ground, subsurface, or a combination of the two, as allowed by TCEQ. The City shall be provided with a copy of any such TCEQ application concurrent with submittal to TCEQ. Beneficial wastewater reuse will be pursued with opportunities including, but not limited to, irrigation of the vineyards; and irrigation of landscaped areas.
- 2.9.3. **Waterway Protection:** If applicable, Owners shall obtain and comply with any authorizations from the US Army Corps of Engineers that may be required for road and utility crossings of creeks and construction of water quality protection infrastructure, including but not limited to Clean Water Act Section 404.
- 2.9.4. **Stormwater Controls:** Owners will prepare and implement a stormwater pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System stormwater general permit and applicable regulatory requirements for construction activities.
- 2.9.5. **Water Quality Protection Ordinance:** Owners agree to implement and comply with the City's Water Quality Protection Ordinance in place on the Effective Date except as modified by this Agreement in *Exhibit C* and elsewhere.
- 2.9.6. **Voluntary Measures:** The Conceptual Plan attached as *Exhibit B* provides for numerous voluntary environmental protection measures for the benefit of the Project and provides for a substantial amount of Open Space.
- (a) **Owner Education:** Owners will implement an education program to further the protection of the environmental resources in the Project. The program shall include, but shall not be limited to, the dissemination of pamphlets and newsletters to educate residents and property owners within the Project about the natural resources of the area and methods of environmental resource protection. Specifically, the educational program will address watershed protection; water conservation; native landscaping; species preservation; rain water harvesting; the dangers of using pesticides, fertilizers, and herbicides in the Barton Springs watershed; the promotion of organic fertilizers and herbicides; and the proper disposal of wastes.
- (b) **Design Guidelines for Single-family Detached Residential:** Each lot shall have a specifically designated area not to exceed 10,000 square feet within which housing construction, clearing, and landscaping will be considered, subject to the review and approval of the architectural control committee of the Homeowners Association. The balance of the lot is to remain in a natural state; though removal of cedar and/or enhancement of native vegetation may be permitted on a case-by-case basis, as well as disturbance as necessary for utility installation and/or

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maintenance, provided the area is restored to its natural state. Single-family residential guidelines will specify use of native and/or adapted species of plant materials and prohibit use of St. Augustine grass.

- (c) **Public Education:** Owners agree to collaborate with the City, the Hays Trinity Groundwater Conservation District, the LCRA, US Fish & Wildlife Service and local school districts to explore the opportunities for public education regarding preservation of the environment using the Project as an example.
- 2.9.7. **Wells:** Owners agree that the use of groundwater will be limited to irrigation of agricultural areas, wet pond makeup water, and nonpotable commercial uses. Permits for use of groundwater will be obtained from the Hays Trinity Groundwater Conservation District as appropriate. New groundwater wells shall be prohibited on single-family residential lots; existing wells occurring within a residential lot may remain for use as monitoring wells for the Hays Trinity Groundwater Conservation District. Owners will work with HTGCD to determine the necessity of installing well monitoring devices on existing wells. Certain wells will be capped and no longer used when LCRA surface water becomes available.
- 2.9.8 **Wet Pond Makeup Water:** Owners hereby establish the following preferences ranked in order for the potential sources for wet pond makeup water:
- (a) Rainwater.
 - (b) Peak run-off from Onion Creek.
 - (c) Well water.
- 2.9.9. **Rainwater Collection:** Residential units will be constructed with rainwater collection systems.
- 2.9.10. **Conservation Easements:** All conservation easements proposed under this Agreement or hereafter designated by the Owners shall be submitted to the City for review and approval prior to becoming effective or being recorded in the real property records. Areas designated in the Conceptual Plan as Open Space or Parkland shall be protected by Conservation Easements or other such enforceable instruments.
- 2.10. **Deed Restrictions:** Owners agree that all restrictive covenants for the Project shall reference the provisions of this Agreement and be made applicable to all builders and subsequent buyers. Copies of the restrictive covenants will be provided to the City for review and comment.
- 2.11. **Fences:**
- 2.11.1. All fencing will be limited by deed restrictions so to not obscure scenic views. Fencing materials and methods shall be consistent. Fencing of a type designed to keep deer

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and other wildlife out of the vineyard areas will be installed. To further retain the natural characteristics of the Property and minimize disturbances associated with the Project, individual residential and commercial lots shall not be fenced except as provided within the design guidelines of the Project.

2.11.2. Fencing along 1826 will be split rail fence or other fence no more than four feet high that is consistent with the Hill Country character we are after. Privacy fencing along 1826 should be prohibited. The internal boundaries of the tract will typically have eight to ten foot deer proof fences. A deer fence will also be located just behind the split rail fence on 1826.

2.12. **Gated Community:** The single-family residential portion of the Project will be a gated community.

2.13. **Private Streets:** The streets within this Project shall be private streets, unless otherwise agreed by Owners and Hays County.

ARTICLE 3. PROPERTY DEVELOPMENT

3.1. **Governing Regulations:** For purposes of any grandfathering analysis, the Parties agree that the relevant date is the Effective Date, for purposes of compliance with Texas Local Government Code Chapter 245, as may be amended. For purposes of this Agreement, the Effective Date is the date of execution by all Parties. The Applicable Rules shall govern the Project, unless otherwise expressly provided in this Agreement.

For the term of this Agreement, the development and use of the Property will be controlled by the terms of this Agreement, the project Approvals and the Applicable Rules. If there is any conflict between the Applicable Rules and the terms of this Agreement, the terms of this Agreement will control.

3.2. **Project Approvals & Entitlements:**

3.2.1. **Project Approvals:** The Project Approvals set forth in *Exhibit C* (the "Project Approvals") have been approved by all required City boards and commissions and the City Council and are granted by the City with respect to the development of the Property. This Agreement shall serve as guidance for the review and approval of any additional waivers, variances, exceptions or other municipal authorizations not specifically included in this Agreement.

3.2.2. **Conceptual Plan:** The City confirms that the Conceptual Plan attached as *Exhibit B* complies with the City's Master Plan and Interim Comprehensive Plan, and that the Conceptual Plan, and all land uses and densities, have been approved by all requisite

City departments, boards and commissions and by the City Council. The City approves the land uses, densities, and reservations of land for public purposes, exceptions, utility and roadway alignments and sizing and other matters shown on the Conceptual Plan. The City's execution of this Agreement shall be deemed to be the approval of the Conceptual Plan upon which the Preliminary Plats for development of the Property will be based.

3.2.3. **Density of Development:** With respect to the density of the Project, Owners will have the right to develop the Property at a density set forth on *Exhibit B*.

3.2.4. **Land Uses:**

- (a) For purposes of this Agreement the following shall be allowed within all areas: single-family residences and related structures; open space; hike and bike trails; agricultural uses, including but not limited to vineyards; roadways; and drainage, detention and water quality facilities.
- (b) Commercial uses shall be limited to the areas designated as such on the Conceptual Plan. Allowable commercial uses shall include resort, lodge, spa, restaurant, food processing, entertainment, dinner theater, convenience store, small grocery, gas sales, helipad, offices, salon, bakery, clothing, art galleries, antique sales, artisan studios, winery, microbrewery and distillery, on-site sale and consumption of alcoholic beverages, liquor store, garden center, nursery, compost production and any other use included in the City's General Retail (GR) zoning category.
- (c) Multi-family, condominium or townhouse uses will be limited to the area designated on the Conceptual Plan as commercial and shall not exceed one hundred (100) units.
- (d) In the areas designated "Casitas" in the Conceptual Plan, the maximum number of units shall be limited to that achievable under the impervious cover and other limitation applicable to the Project. No more than two (2) units per building or structure shall be permitted.
- (e) Industrial uses will be limited to food processing.
- (f) Exceptions:
 - 1. Town Center: Individual building footprint will be limited to twenty thousand (20,000) square feet. Minimum building separation will be twenty-five feet (25'). Maximum height will be two (2) stories, but in no instance greater than forty feet (40').

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2. Hospitality/Winery/Bakery: Individual building footprint will be limited to sixty thousand (60,000) square feet. Minimum building separation will be five feet (5'). The maximum height for the lodge will be limited to forty (40'), unless the fire department determines a height of sixty (60') is permitted by providing a letter approving the change in height to the City Administrator. Maximum height on non-habitable buildings will be limited to sixty feet (60').
- (g) **Impervious Cover Limits:** Owners agree to limit the impervious cover to a maximum of fourteen percent (14%) of the Property. Owners shall have the right to apportion impervious cover on a lot by lot basis. Owners may apportion such impervious cover as it deems desirable so long as the overall impervious cover limitation is not exceeded. Impervious cover from existing improvements on the property shall be included within the fourteen percent limit. Owners may count in density and impervious cover calculations land designated as greenbelt, open space, agricultural uses, floodplains, or similar areas. Construction of buildings on slopes will be in accordance with the present ordinances of the City except as amended by this Agreement.
- (h) **Impervious Cover Tracking:** Each plat filed with the City shall contain a chart indicating the amount of impervious cover for the entire Property, the amount associated with prior platted areas and the amount associated with the area subject to such plat. The chart shall also show the average lot size computation for the Property as a whole and resulting from the plat and prior platted areas. Any portion of the Property may be replatted to change the use or designation of that previously platted portion so long as the entire platted portion of the Property meets the requirements of this Agreement, including impervious cover. So long as this Agreement remains in effect, such replatting shall be deemed controlled by this Agreement as if the same were an original platting of such replatted portions.
- (i) **Continuation of Existing Uses, Activities & Improvements:** Lawful land uses, activities, and improvements (including improvements and buildings shown on the Concept Plan) that currently exist within the Property shall be allowed to continue operating in the same manner and location during the term of this Agreement, including upon annexation of all or any portion of the Project into the City, regardless of any City Rules or Applicable Rules to the contrary. Current uses, activities, and improvements that are expressly permitted to continue include, without limitation:
- (a) Operation of Thurman's Mansion, and related activities and improvements, including but not limited to shipping, receiving, parking, office space, events, functions and food preparation and service.

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- (b) Operation of the Salt Lick Restaurant and related activities and improvements, including but not limited to shipping, receiving, parking, food preparation, food service and food catering.
- (c) Operation of the Salt Lick Pavilion and related activities and improvements, including but not limited to events, functions, parking, food preparation, food service, parking and shipping.
- (d) Operation of the Old Settlers Music Festival or other similar events, and all related activities, including but not limited to shipping, receiving and parking.
- (e) For the purposes of this Agreement the Salt Lick Restaurant and the Salt Lick Pavilion are included solely for the purposes of impervious cover calculation and demonstration of protection of water quality. Any permits or approvals for improvements to those facilities shall be subject only to the requirements applicable in the ETJ and any other applicable instruments existing between the City and Owners.

- 3.3. Further Approvals:** Upon the Effective Date of this Agreement, Owners may develop the Property consistent with the Project Approvals and this Agreement. Any future approvals granted in writing by the City for such development as well as any written amendments to the Project Approvals will become a part of the Project Approvals.
- 3.4. Standard for Review:** The City's review and approval of any submissions by Owners will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owners in accordance with the applicable City's ordinances, state law and this Agreement. If any submittal is not approved, the City will provide written comments to Owners specifying in detail all of the changes that will be required for the approval of the submittal.
- 3.5. Approvals & Appeals:** The City acknowledges that timely City reviews are necessary for the effective implementation of Owners' development program. Therefore, the City agrees that it will comply with all statutory and internal City time frames for development reviews. The City further agrees that if, at any time, Owners believe that an impasse has been reached with the City staff on any development issue affecting the Project or if Owners wish to appeal any decision of the City staff regarding the Project, then Owners may immediately appeal in writing to the City Council requesting a resolution of the impasse at the next scheduled City Council meeting, subject to compliance with all timetables required by the open meeting laws. Appeals and approvals of variances may be approved by an affirmative vote of at least three of the five (3/5) members of the City Council.
- 3.6. Conceptual Plan Amendments:**
- 3.6.1. Due to the fact that the Project comprises a significant land area and its development will occur in phases over a number of years, modifications to the Conceptual Plan may become necessary due to changes in market conditions or other factors.

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- 3.6.2. In order to provide flexibility with respect to certain details of the development of the Project Owners may seek changes in the location and configuration of the lots shown on the Conceptual Plan. Such changes will only require an administrative amendment to the Conceptual Plan so long as the Impervious Cover requirements herein are met and so long as the changes are deemed minor by the City Administrator. The determination of whether the changes are major or minor is at the sole discretion of the City Administrator.
- 3.6.3. The City Administrator shall be responsible for consideration and approval of such administrative amendments to the Conceptual Plan. The City Administrator may defer such approval to the City Council at the City Administrator's discretion. Similarly, minor variations of a preliminary plat or final plat from the Conceptual Plan that are approved by the City Administrator that do not increase the overall Impervious Cover limit of fourteen percent (14%), and which otherwise comply with the Applicable Rules, and this Agreement will not require an amendment to the Conceptual Plan.
- 3.6.4. Vineyards: The Conceptual Plan shows approximately sixty (60) acres of vineyard area. Substantial expense has been incurred and will continue to be incurred in establishing the vineyards. However, the long term viability of vineyards in this area is yet to be proven. In the event disease or other factors, in the sole judgment of the Owners, render the vineyards non-viable, Owners have the right to develop the vineyard area for single-family residential use. Any such additional residential development remains subject to the fourteen percent (14%) overall impervious cover limit.
- 3.7. **Term of Approvals:** The Conceptual Plan, the Project Approvals, and any preliminary plat or final plat approved pursuant to this Agreement will be effective for the term of this Agreement unless otherwise agreed by the Parties.
- 3.8. **Extension of Permits & Approvals:** Any permit or approval under this Agreement or granted by the City pursuant to, or in accordance with, this Agreement shall be extended for any period during which performance by any Owner is prevented or delayed by action of a court or administrative agency, or an Owner is delayed due to failure to receive a governmental permit despite demonstrable diligent efforts to obtain said permit. In no instance shall any permits or approvals be extended beyond the fifteen year duration of this Agreement.
- 3.9. **Initial Brush Removal:** Owners may mechanically remove brush without material soil surface disruption prior to receiving approval of plats in order to determine the location of roads, lots, utilities and drainage areas with regard to preservation of environmental features. Prior to plat approval, Owners may neither remove any tree (other than cedar trees) with a trunk having a diameter greater than four (4) inches measured four (4) feet above the base (ground elevation) of the tree, nor materially alter the existing drainage patterns prior to receiving City approval of Preliminary Plat. Owners shall ensure that as much area as possible

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is left undisturbed for as long as reasonably possible. Provided, however, Owners may relocate/transplant trees on the Property at any time.

3.10. Building Code:

- 3.10.1. Owners agree that all single-family residential buildings shall be constructed in accordance with all applicable building or construction codes that have been adopted by the City. In addition, Owners shall require all builders of residential structures to meet the LEED program requirements, as administered through the City of Dripping Springs or its agents. Fees for all residential building permits or building inspections by the City or the City's designee under this section shall be paid by builders. Residential building permit and building inspection fees are not included among the fees specifically listed in this Agreement. City will provide inspections timely and during any period prior to annexation.
- 3.10.2. Commercial buildings shall be required to obtain building permits. In addition, Owners shall require all builders of non-residential structures to meet the requirements of the LEED silver program, as administered through the City of Dripping Springs or its agents. The requirements provided in this subsection shall not apply to the Salt Lick Restaurant or the Pavilion.
- 3.10.3. Building Code waivers or exceptions may be sought by Owners to achieve superior aesthetic design goals if not waiver or exception does not result in threat to the safety of persons or property. Waivers and exceptions may be issued administratively by the City Administrator upon receipt of guidance from the City Attorney, City Engineer and Development Coordinator.
- 3.10.4. The City agrees that building permit review and issuance shall be accomplished within seven (7) working days for residential building permits and within twenty-eight (28) working days for commercial building permits commencing from the date the building permit application is designated administratively complete.

3.11. Fiscal Security for Improvements:

- 3.11.1. Owners shall be required to provide fiscal surety prior to final plat approval for all road and drainage improvements to Hays County in accordance with the Hays County Subdivision and Development Regulations (effective June 3, 1997). The Owners will be subject to Article VIII, Section 8.3 of those regulations requiring for the Owners to provide to Hays County a good and sufficient surety bond (Performance Bond) or letter of credit equal to one hundred percent (100%) of estimated cost of subdivision-related road and drainage improvements and related infrastructure. Obligations of Owners contained within this bond or letter of credit shall be expired and discharged

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by the City and Hays County upon construction completion of improvements necessary for the final plat.

- 3.11.2. Owners shall be required to provide fiscal surety to the City prior to final plat approval for all subdivision-related domestic water service improvements and structural water quality control devices/infrastructure. The Owners will provide to the City a good and sufficient surety bond (Performance Bond), letter of credit or cash escrow equal to 100% of the estimated costs of all subdivision-related domestic water service improvements and structural water quality control devices/infrastructure. The method or type of surety provided will be optional to the Owners. Obligations of Owner contained within this bond, letter of credit or cash escrow shall be expired and discharged by the City upon construction completion of improvements necessary for final plat approval.
- 3.12. **Highway Access:** The roadway cuts shown on *Exhibit B* are approved by the City as of the Effective Date. Approval of such roadway cuts is contingent on documentation from TxDOT that they are in agreement with the location of the roadway and driveway cuts. Owners and City agree that traffic safety is crucial. All roadway and driveway cuts onto RR 1826, RR 150 and RR 967 not shown on *Exhibit B* shall be subject to the approval of the City.
- 3.13. **Deed Restrictions:** Owners agree that all restrictive covenants for the Project shall reinforce the provisions of this section and apply to all builders and subsequent buyers, and shall be appropriately drafted and filed to effectuate this intent and Agreement.

ARTICLE 4. ADDITIONAL MATTERS

- 4.1. **Lighting:** The Project shall comply with the City's Lighting Ordinance. Notwithstanding the foregoing, the following standards are designed to comply with and implement the City's Dark Skies Ordinance. Owners agrees to illuminate the Commercial areas of the Project in accordance with the following standards:
- 4.1.1 Pole mounted light fixtures within the Project shall be rated at least full cutoff and be hooded and shielded to control light directed off the Project. Pole mounted light fixtures may not be at a height greater than thirty feet (30') above finished grade.
- 4.1.2 If any landscape lighting is installed on the Property, such landscape lighting shall meet the following requirements:
- (a) Landscape lighting such as tree lighting shall be achieved using low voltage lighting with concealed source.
 - (b) Fixtures shall be mounted no higher than fifteen feet (15') measured from the ground to the bottom of the fixture.

- (c) Low voltage twenty (20) watts lamps are preferred and lamps shall not exceed thirty-five (35) watts.
- (d) Lamps shall be housed in bullet style enclosures with an extending truncated shield to maximize cutoff.
- 4.1.3 Floodlights (other than building and/or loading dock security and safety lights and other building-mounted floodlights, and pole-mounted floodlights to illuminate the front of the store) are prohibited. The allowed floodlights, like all exterior lights, must adhere to all other requirements of this Agreement, including the requirement that they must be at least eighty-five (85) -degree cut-off fixtures.
- 4.1.4 Owners shall use commercially reasonable efforts to minimize luminous elements on the Property that are visible from any other property provided that it shall be acceptable for Owners to install lighting as described in Sections 2.2.2(a) and (c) above. An exception to the minimization of light visible from other property is allowed for motion sensor activated lighting provided it is located in such a manner as to prevent direct glare and lighting onto the properties of others or into a public right-of-way, and provided the light is set to only go on when activated and to go off within five (5) minutes after activation has ceased, and the light shall not be triggered by activity off the Property.
- 4.1.5 Interior light fixtures producing light that could be visible through roofing material shall be full cutoff; provided, however, a building may employ skylights or other devices for energy conservation, which devices absorb light during the day and light the interior of the building after sunset, some of which absorbed and reused light could be visible through roofing material. Translucent roofing material over a home and garden center may be unshielded with an opaque material in order to provide adequate lighting for plants.
- 4.1.6 Exterior Lighting. Exterior lighting shall be designed to minimize glare and light trespass, to preserve the rural character of the Salt Lick, Driftwood, and surrounding area, minimize energy waste and to protect the health, safety and welfare of the general public. All lights are to be at least eighty-five (85)-degree cut-off fixtures. Average maintained illumination levels for each area shall not exceed the specific number of foot-candles, as provided below:

AREA	MEASURED HORIZONTALLY AT GROUND / PAVEMENT LEVEL
Building Façade	5-7 average fc
Parking Lot	4-6 average fc
At Property Lines	1-2 average fc

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4.2. Signage

- 4.2.1 Notwithstanding other provision in the Code, the following criteria constitute the sign regulations for the Property and shall govern all commercial and subdivision signage for the Property. All other signage, and any deviations from the standards set out below, shall be assessed in accordance with the City Sign Ordinance in effect at the time a sign permit application is filed.
- 4.2.2 Owners may install and maintain a maximum of three (3) free standing monument signs on premise and three (3) off premise signs located on the Property as part of the Project, the top of which shall not be more than ten feet (10') in height (as measured from the adjacent street frontage).
- 4.2.3 All of such free standing monument signs may be back-to-back, double-faced, and/or multi-use signs. As used herein, sign area is defined as the number of square feet contained within the smallest single polygon that will encompass the actual lettering and any logo on one face of the sign (a logo may be measured using a separate polygon or circle from that containing the lettering). The face of the sign shall not exceed six feet (6') vertical. The portions of a masonry structure on which the sign is located are not counted as part of the sign area provided they are not contained within the polygon. The portions of a masonry structure on which the sign is located shall be counted as to the overall height of the sign structure. Notwithstanding any provision of the Code to the contrary, some or all of such signs may be off premises signs in whole or in part, provided that no such sign may be located off of the Property or advertise a business not located on the Property.
- 4.2.4 Informational LED/LCD signage utilized for directional/event information is permitted, however, these signs shall not flash or scroll, and may not contain advertising.
- 4.2.5 Each tenant or occupant on the Property shall be entitled to install flat building signage, including logos, complying with the following requirements:
- (a) Lettering constituting such signage shall consist of one (1) horizontal line of lettering not to exceed twenty-four inches (24") in height; or two (2) horizontal lines of lettering not to exceed thirty-six inches (36") in height, including a minimum six inch (6") space between the two (2) lines; no lettering line shall exceed fifty percent (75%) the width of the store front glass.
 - (b) Logos shall not exceed four square feet (4 sq. ft.) in size and may be used with one line of lettering not to exceed twenty-four inches (24") in height or forty-eight inches (48") in length.
 - (c) The total length on any such sign shall not exceed fifty percent (50%) of the storefront width of the tenant or occupant's premises in the Property; and Signs for

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any one (1) tenant or occupant shall not exceed or be placed beyond the storefront width.

(d) All signs elements shall be at least twenty-four inches (24") from the top, sides and base of the façade.

- 4.2.6 Sign Extension. Flat building signage for all buildings on the Property may not extend more than ten inches (10") from the façade of such buildings.
- 4.2.7 Graphic Symbols. Graphic symbols used to represent or identify a business entity or organization shall be permitted to be displayed on all signs within the Property upon Owners' approval.
- 4.2.8 Design. All signs and supporting structures shall be designed in accordance with the overall architectural theme of the Property.
- 4.2.9 Finishes. Color applied to sign faces can be gloss. Returns shall be painted to match the facade.
- 4.2.10 Lighting. All letters must be mounted to aluminum wireways. Wireways cannot exceed twelve inches (12") in height and MUST be painted to match the appropriate building exterior. One visible wireway is permitted per sign. Lighting must comply with the City's Lighting Ordinance.
- 4.2.11 Window Signs. No exterior window signs are permitted other than the following: hours of operation not to exceed three square feet (3 sq.ft.). Interior installation. Operation hours can include phone contact numbers and web address.
- (a) Address marking to indicate suite number only and shall not exceed one square foot (1 sq.ft.) in area. Interior Installation.
- (b) All signs are subject to Owners' approval.
- 4.2.12 Moving or Flashing Signs Prohibited. The following signs are prohibited: Signs employing moving or flashing lights; Signs employing exposed ballast boxes or transformers; Sign manufacturers name, stamps or decals; Signs employing painted, non-illuminated letters; and Signs employing unedged plastic letters or letters with no returns or exposed fastenings.
- 4.3. **Fire Protection:** Fire protection will be provided by the Driftwood Volunteer Fire Department and this Project will comply with the fire protection standards as mandated by the Driftwood Volunteer Fire Department and/or Emergency Services District #5, until such time as the Project is annexed into the City.

4.4. **Annexation:**

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4.4.1. **Annexation:**

- (a) Owners hereby agree that this Agreement, once approved and signed by all parties, is a valid and legally sufficient request to extend the city limits of the City (i.e., incorporated municipal boundary) to cover the Property, and no additional petitions or requests from the Owners are necessary, except as provided below. A petition for annexation is included as *Exhibit "E"*, which shall be valid for the duration of this Agreement, and shall be binding on Owners' successors and assigns and subsequent purchasers. Owners agree that if the Property, or any portion thereof, is sold prior to the expiration of fifteen (15) years from the Effective Date, Owners shall, as part of the closing documents, execute and cause to be recorded restrictive covenants or other documents memorializing the provisions of this Agreement. Owners further agree that if the Property, or any portion thereof, is sold for commercial purposes prior to the expiration of fifteen (15) years from the Effective Date, Owners shall, as part of the earnest money contract, cause to be executed by the subsequent purchaser(s) a petition for annexation in the form as the one provided in *Exhibit "F"*, which shall be valid for the remainder of the fifteen (15) years from the Effective Date and filed with the City. Owners agree to provide the City a written Notice of Sale of Commercial Property together with a petition for annexation in the form as the one attached hereto as Exhibit "F", if obtained from the subsequent purchaser within fifteen (15) business days after completion of such sale.

The City agrees it will not annex any portion of the Property for a period of fifteen (15) years after the Effective Date, unless: (1) otherwise agreed by both parties; (2) an executed annexation petition from a subsequent purchaser of a commercial portion of the Property is not provided to the City; or (3) annexation of a commercial portion of the Property is necessary to implement an economic mechanism offered by the City as provide below in subsection (b). In the event an executed annexation petition from a subsequent purchaser of a commercial portion of the Property is not provided, Owners shall provide written notice to City than an annexation petition has not been executed by a subsequent purchaser sixty (60) days prior to the closing date, as defined in the earnest money contract, along with a metes and bounds description of the portion of the property being sold. At such time, City shall have the right to only annex the commercial portion of the Property for which no executed annexation petition has been obtained.

Further, in the event of future annexation of the commercial portions of the Property as authorized in this subsection, City acknowledges that Section 43.056 (g) of the Texas Local Government Code requires that if the area to be annexed has a level of services for operating and maintaining infrastructure superior to the level of services provided within the City's corporate boundaries before annexation, the City's annexation service plan must provide

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for the operation and maintenance of infrastructure of the annexed area at a level of services that is equal to or superior to that level of service existing before annexation.

- (b) The parties acknowledge that the Owners are investigating the feasibility of the creation of a special district or other economic mechanism (the “economic mechanism”) that will create a revenue stream to assist the Owners with the construction and/or maintenance of Project infrastructure, landscaping or other eligible capital improvements related to the Project. City and Owners have agreed to work together with respect to such an economic mechanism. If, within six (6) months of the Effective Date of this Agreement, Hays County has offered the creation of an economic mechanism for the Project and the City is able to offer the Owners in writing an economic mechanism that is equal to the economic mechanism offered by Hays County for the Project, Owners agree to accept the economic mechanism offered by City rather than that offered by Hays County. Further, if necessary to implement the economic mechanism offered by the City, the Owners agree to annexation of the commercial portions of the Property by the City prior to the expiration of the fifteen (15) year period after the Effective Date. In the event such early annexation is necessary to implement the City’s economic mechanism, the City agrees to provide Owners a Council Resolution or other written instrument evidencing the City’s commitment to create and provide the economic mechanism for the Project. If, after the expiration of the six (6) month period after the Effective Date the City is unable to offer an economic mechanism equal to the economic mechanism offered by Hays County for the Project, Owners shall be free to seek the creation of an economic mechanism by Hays County or other means.

4.4.2. **Land Uses:** Contemporaneously with the annexation of Property within the Project, the City will initiate the zoning process for that area consistent with land uses existing on the effective date of the Agreement, and, for any undeveloped land, the land uses described in the Conceptual Plan and the uses described in Section 3.2.4.

4.5. **On-site Construction Materials:** A substantial amount of sand and gravel has been removed from Onion Creek and stockpiled on the site as part of a creek restoration project. The materials will be sorted by size for use in the construction of the Project. Excavation of additional material may be conducted on the site and mixed with the existing stockpiled material to meet specifications for road base and other uses.

4.6. **Creek Maintenance:** Maintenance of a healthy aquatic environment above the dam on Onion Creek requires the periodic removal of sand and gravel deposited in the stream bed. Such maintenance is authorized under this Agreement pursuant to appropriate permitting from TCEQ, US Army Corps of Engineers, Texas Parks & Wildlife Department and Hays County.

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ARTICLE 5. AUTHORITY

5.1. Term:

- 5.1.1. **Initial Term:** The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years thereafter (“Initial Term”), unless sooner terminated under this Agreement. This Agreement may be extended for a longer duration not to exceed an additional ten (10) years upon mutual agreement of the Parties. In the event such an extension is agreed to all provisions of this Agreement shall remain in full force and effect throughout the extension.
- 5.1.2. **Expiration:** After the Initial Term and any extension, this Agreement will be of no further force and effect except that termination will not affect any right or obligation arising from Project Approvals previously granted.
- 5.1.3. **Termination or Amendment:** This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Owners or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Owners of only the portion of the Property affected by the amendment or termination.

- 5.2. **Authority:** This Agreement is entered under the statutory authority of Section 212.172 of the Texas Local Government Code. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Property as provided in this Agreement; authorize certain land uses and development on the Property provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Property to the City.

- 5.3. **Applicable Rules:** As of the Effective Date, Owners have initiated the subdivision and development permit process for the Project. The City agrees that in accordance with Chapter 245, Local Government Code, the City will consider the approval of any further approvals necessary for the Project based solely on the Applicable Rules, as modified by the Project Approvals and this Agreement. Further, the City agrees that, upon the Effective Date, Owners have authority to develop the Property in accordance with the Applicable Rules, as modified by any exceptions contained in the Project Approvals and this Agreement.

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- 5.4. Right to Continue Development:** In consideration of Owners' agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Project, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or oilier necessary approvals, within the Project. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Project will apply to the Property if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owners' obligations or decreasing Owners' rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.
- 5.5. Equivalent Substitute Obligation:** If either Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, subsequent conditions that would legally excuse performance under this Agreement or, the Parties agree to cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.
- 5.6. Cooperation:**
- 5.6.1. The City and Owners each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.
- 5.6.2. The City agrees to cooperate with Owners in connection with any waivers or approvals Owners may desire or require to obtain from the County in connection with the development of the Property.
- 5.7. Litigation:** In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Owners and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The Owners agree to defend and indemnify the City for any litigation expenses, including court costs and attorneys fees, related to defense of this Agreement. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

ARTICLE 6. GENERAL PROVISIONS

6.1. Assignment & Binding Effect:

- 6.1.1. This Agreement and the rights and obligations of Owners hereunder, may be assigned by Owners to a subsequent purchaser of all or a portion of the undeveloped property within the Project provided that the assignee assumes all of the obligations hereunder. Any assignment must be in writing, specifically describe the property in question, set forth the assigned rights and obligations and is executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.
- 6.1.2. If Owners assign its rights and obligations hereunder as to a portion of the Project, then the rights and obligations of any assignee and Owners will be non-severable, and Owners will be liable for the nonperformance of the assignee and vice-versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, even if such remedies will impede development activities of any performing developer as a result of that nonperformance.
- 6.1.3. The provisions of this Agreement will be binding upon, and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Project.
- 6.1.4. Owners agree that all restrictive covenants for the Project shall reinforce this Agreement. Owners further agree to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement shall be recorded in the Hays County land records to place subsequent purchasers on notice.

6.2. **Severability:** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

6.3. **Governing Law, Jurisdiction & Venue:** *This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within*

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the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in *Hays County*, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

- 6.4. No Third Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- 6.5. Mortgage Protection:** This Agreement will not affect the right of Owners to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project. The City understands that a lender providing financing for the Project ("Lender") may require interpretations of or modifications to this Agreement and agrees to cooperate with Owners and its Lenders' representatives in connection with any requests for interpretations or modifications. The City agrees not to unreasonably withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City agrees as follows:
- 6.5.1. Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.
- 6.5.2. The City will, upon written request of a Lender given in compliance with Section 6.17, consider providing the Lender with a copy of any written notice of default given to Owners under this Agreement within ten (10) days of the date such notice is given to Owners.
- 6.5.3. In the event of default by Owners under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Owners, either under this Agreement or under the notice of default.
- 6.5.4. Any Lender who comes into possession of any portion of the Property by foreclosure deed in lieu of foreclosure will take such property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Owners arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Owners under this Agreement that relate to the property in question have been paid or performed.
- 6.6. Certificate of Compliance:** Within thirty (30) days of written request by either Party given accordance with Section 6.17, the other Party will execute and deliver to the requesting Party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and

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stating the date and nature of each modification; (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A Party's failure to deliver a requested certification within this thirty (30) day period will conclusively be deemed to constitute a confirmation that this Agreement is in full force without modification, and that there are no uncured defaults on the part of the requesting Party. The City Administrator or City Development Coordinator will be authorized to execute any requested certificate on behalf of the City.

- 6.7. **Default:** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the regulations applied herein.
- 6.8. **Remedies for Default:** If either Party defaults under this Agreement and fails to cure the default within the applicable period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement. In the event of a default by the City, Owners will be entitled to seek a writ of mandamus, in addition to seeking any other available remedies. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.
- 6.9. **Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- 6.10. **Attorneys Fees:** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney's fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment.
- 6.11. **Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver

will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

- 6.12. Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. An amendment to this Agreement may only be approved by an affirmative vote of at least three of the five (3 of 5) members of the City Council.
- 6.13. Exhibits, Headings, Construction & Counterparts:** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
- 6.14. Time:** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.
- 6.15. Authority for Execution:** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Owners certify, represent and warrant that the execution of this Agreement is duly authorized in conformity with their authority.
- 6.16. Property Rights:** Owners expressly and unconditionally waive and release the City from any obligation to perform a takings impact assessment under the Texas Private Real Property Rights Act, Texas Government Code Chapter 2007, as it may apply to this Agreement, the Property, and the Project.
- 6.17. Notices:** Any notices or approvals under this Agreement must be in writing may be sent by hand delivery, facsimile (with confirmation of delivery) or certified mail, return receipt requested, to the Parties at the following addresses or as such addresses may be changed from time to time by written notice to the other Parties:

CITY:

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

Copy to: Alan J. Bojorquez
Dripping Springs City Attorney
12325 Hymeadow Dr., Ste. 2-100
Austin, Texas 78750

OWNERS:

Original: c/o M. Scott Roberts
17900 FM 1826
Driftwood, Texas 78619

Copy to: Henry Gilmore
Attorney for Owners
DuBois, Bryant, Campbell, & Schwartz, L.L.P.
700 Lavaca Street
Suite 1300
Austin, Texas 78701

6.18. Exhibits: The exhibits to this Agreement shall be incorporated herein for all intents and purposes. The exhibits are listed as follows:


- Exhibit A The Property
- Exhibit B Conceptual Land Use Plan
- Exhibit B1 Open Space
- Exhibit C Alternative Project Standards and Variances
- Exhibit C1 Street Design Standards
- Exhibit D Driftwood Commercial Landscape Design Criteria
- Exhibit E Annexation Petition
- Exhibit F Annexation Petition for Commercial Properties

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THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT TO BE EFFECTIVE ON OCTOBER __, 2007.

CITY OF DRIPPING SPRINGS:

M. SCOTT ROBERTS:

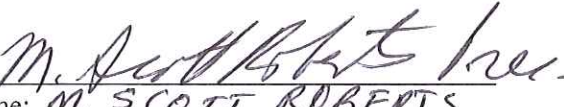
by: 
Todd Purcell, Mayor

by: 
M. Scott Roberts

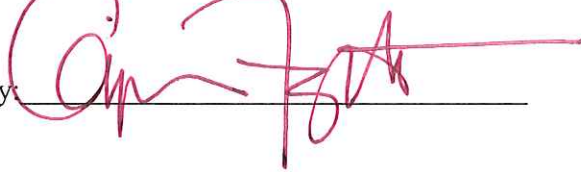
ATTEST:

DRIFTWOOD EQUITIES, LTD.

by: 
Amanda Craig, City Secretary

by: 
Name: M. SCOTT ROBERTS
Title: PRESIDENT

ATTEST:

by: 

APPROVED AS TO FORM:

APPROVED AS TO FORM:

by: 
Alan J. Bojorquez, City Attorney

by: _____
Henry Gilmore, Counsel for Owners

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Vol 5a
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THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT TO BE EFFECTIVE ON OCTOBER __, 2007.

CITY OF DRIPPING SPRINGS:

M. SCOTT ROBERTS:

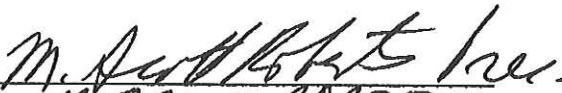
by: _____
Todd Purcell, Mayor

by: 
M. Scott Roberts

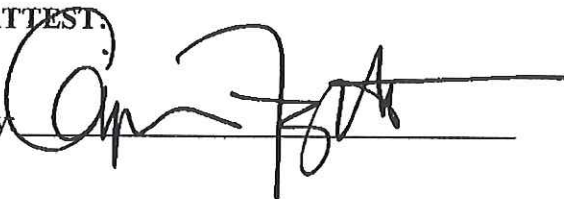
ATTEST:

DRIFTWOOD EQUITIES, LTD.

by: _____
Amanda Craig, City Secretary

by: 
Name: M. SCOTT ROBERTS
Title: PRESIDENT

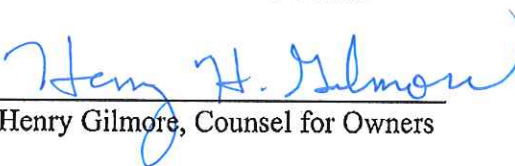
ATTEST:

by: 

APPROVED AS TO FORM:

APPROVED AS TO FORM:

by: _____
Alan J. Bojorquez, City Attorney

by: 
Henry Gilmore, Counsel for Owners

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FIELDNOTE DESCRIPTION of a tract or parcel of land containing 500.286 acres situated in the Fannie A. D. Darden, Abstract No. 664 and the Freelove Woody Survey No. 23, Abstract No. 20, Hays County, Texas, being a portion of that tract conveyed to Masa Scott Roberts by deed recorded in Volume 966, Page 156 of the Deed Records of Hays County, Texas and further described as Tract 1 of 130 acres, Tract 2 of 100 acres and Tract 3 of 47 ½ acres and Tract 4 of 200 acres, being further described by the deed recorded in Volume 168, Page 156 of the said Deed Records and all of that 44.1134 acre tract conveyed to Driftwood Equities, Ltd. By the deed recorded in Volume 1433, Page 776 of the said Deed Records, said 44.1134 acre tract being a portion of that 100 acre tract conveyed to Masa Scott Roberts by the deed recorded in Volume 301, Page 865 of the said Deed Records; the herein described 500.286 acre tract is more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found in the east right-of-way line of State Highway FM 150 (80' right-of-way), being the west line of the above said 288 acre tract, for the northwest corner of a 12.00 acre tract conveyed to Horance Seiders and Violet Seiders by deed recorded in Volume 354, Page 763 of the said Deed Records, said ½" iron rod found bears N07°53'25"W, 329.46 feet from a TxDOT Type I concrete right-of-way monument found 40.00 feet left of State Highway FM 150 centerline station 281+96.9;

THENCE, N07°53'25"W, with the east right-of-way line of State Highway FM 150, a distance of 663.25 feet to a ½" iron rod found for the southwest corner of that 12.46 acre tract conveyed to Rudolph Kranse and Gregory Hargis by deed recorded in Volume 771, Page 651 of the said Deed Records, said ½" iron rod found bears S07°53'25"E, 73.86 feet from a TxDOT Type I concrete right-of-way monument found 40.00 feet left of State Highway centerline station 271+30.4;

THENCE, N88°02'55"E, crossing into the 288 acre tract, with the south line of the said 12.46 acre tract, 912.29 feet to a ½" iron rod set for the southeast corner of the aforesaid 12.46 acre tract;

THENCE, N06°46'55"W, 600.43 feet to a ½" iron rod found for the northeast corner of the said 12.46 acre tract;

THENCE, S89°02'53"W, with the north deed line of the said 12.46 acre tract, 77.37 feet to the calculated point of intersection of this north deed line, with the east deed line of that 5.2506 acre tract conveyed to Kathleen Collins and Thomas Wendt by deed recorded in Volume 1427, Page 454 of the said Deed Records, said 5.2506 acre tract being a portion of that 10.283 acre tract described in the deed to Warren Dunn, Jr. recorded in Volume 1376, Page 684 of the said Deed Records, the said calculated point bears N05°17'08"E, 2.95 feet from a ½" iron rod found for the southeast corner of the aforesaid 10.283 acre tract;

THENCE, N05°17'08"E, with the east line of the 10.283 acre tract, at a distance of 131.06 feet (record distance) pass the common east corner of the said 5.2506 acre tract and a 5.04 acre tract described in a deed to Michael Dunn and recorded in Volume 1296, Page 414 of the said Deed Records, and continuing for a total distance of 618.54 feet to a 5/8" iron rod found for the northeast corner of the said 10.283 acre tract and the 5.04 acre tract, being on the apparent common line between the above said 288 acre tract and the 100 acre tract, same being the POINT OF REFERENCE for the 5.336 acre tract described below;

THENCE, S86°24'25"W, with the above said common line between the 288 acre tract and the 100 acre tract, being the north line of the 5.04 acre tract and the 10.283 acre tract, 91.89 feet to a ½" iron rod found for the southeast corner of a 14 acre tract conveyed to Mrs. Elna Ludine Roberts by deed recorded in Volume 135, Page 38 of the said Deed Records and being the apparent southwest corner of the 100 acre tract (Tract 2) described above;

THENCE, N07°27'54"W, with the common line between the said 14 acre tract and the 100 acre tract, 1242.44 feet to a ½" iron rod found for the common north corner of the aforesaid 14 acre tract and the 100 acre tract, being in the south line of Lot 1-D, "Division of Lot 1, the J. V. Ash, Jr. Subdivision", a subdivision recorded in Volume 10, Page 217 of the Plat Records of Hays County, Texas;

THENCE, S89°18'23"E, 174.13 feet to a ½" iron rod found for the southeast corner of said Lot 1-D, being the southwest corner of that 0.83 acre tract conveyed to Masa Scott Roberts by deed recorded in Volume 333, Page 323 of the said Deed Records, and being in the common line between the said 100 acre tract and the 130 acre tract (Tract 1) described above;

THENCE, N08°44'17"W, with the east line of Lot 1-D, being the west line of the said 0.83 acre tract, 101.46 feet to a ½" iron rod found for an angle point;

500.286 Acres
SAVE AND EXCEPT
5.336 Acres
Page 3 of 10

Fannie A. D. Darden Survey, Abst. No. 664
Freelove Woody Survey No. 23, Abst. No. 20
February 22, 2007

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THENCE, N33°27'31"E, with the west line of the said 0.83 acre tract, at 148.39 feet pass a ½" iron rod found for the common east corner of Lot 1-D, and Lot 1-B, of said "Division of Lot 1, The J. V. Ash, Jr. Subdivision", for a total distance of 209.96 feet to a fence corner post found for an angle point in said Lot 1-B, being the most northerly corner of the aforesaid 0.83 acre tract;

THENCE, S69°54'59"E, with the north line of the said 0.83 acre tract, 18.34 feet to a cotton gin spindle found in rock, for the southeast corner of said Lot 1-B, being the southwest corner of Lot 2, Block 'B', "Creek of Driftwood Subdivision", a subdivision recorded in Volume 8, Page 246 of the said Plat Records;

THENCE, along the centerline of Onion Creek, with the northeast and easterly line of the above said 130 acre tract, for the following twenty-six (26) courses:

- 1) S80°26'41"E, 216.51 feet to a calculated angle point in the south line of Lot 2, Block 'B', from which a 100d nail set for reference bears S85°22'12"W, 52.47 feet;
- 2) N89°33'24"E, 514.79 feet to the calculated southeast corner of said Lot 2, Block 'B';
- 3) S54°23'50"E, 13.02 feet to a calculated angle point on the south line of that 9.533 acre tract conveyed to Tom Hewett by deed recorded in Volume 363, Page 256 of the said Deed Records;
- 4) N89°54'14"E, 70.80 feet to a calculated angle point in the said south line of the 9.533 acre tract, from which a cotton gin spindle set for reference bears N69°02'42"E, 138.90 feet;
- 5) N59°58'53"E, 562.38 feet to the calculated southeast corner of the 9.583 acre tract, being the southwest corner of Lot 34, "Driftwood Falls Estates", a subdivision recorded in Volume 4, Page 111 of the said Plat Records;
- 6) N59°52'14"E, 343.26 feet to a calculated point for the southeast corner of said Lot 34, "Driftwood Falls Estates", from which a ½" iron rod found with cap, for the northeast corner of aforesaid Lot 34, bears N42°56'02"W, 386.89 feet and a 100d nail set for reference bears N20°35'12"E, 70.23 feet;
- 7) N22°45'14"E, at 257.83 feet pass a calculated point for the northeast corner of Lot 35, Driftwood Falls Estates, from said calculated point a ½" iron rod found for the most northerly corner of said Lot 35, bears N75°19'16"W, 355.71 feet, and continuing for a total distance of 752.70 feet to the calculated southeast corner of Lot 39, "Driftwood Falls Estates", from which a 100d nail set for reference bears N43°29'40"W, 26.48 feet;

- 8) N04°06'47"W, at 110.23 feet pass the calculated northeast corner of said Lot 39, bearing N82°20'00"E, 652.52 feet from a ½" iron rod found for the northwest corner of aforesaid Lot 39, and continuing for a total distance of 606.60 feet to a calculated angle point;
- 9) N13°19'47"W, at 68.75 feet pass a ½" iron rod found 0.31 feet to the east, at a distance of 179.17 feet pass a ½" iron rod found 0.06 feet to the east for the northeast corner of Lot 45, "Driftwood Falls Estates", from which a ½" iron rod found for the northwest corner of said Lot 45, bears N82°23'39"E, 666.13 feet, and continuing for a total distance of 568.40 feet to a calculated angle point, from which a 100d nail set for reference bears N75°41'33"W, 16.29 feet;
- 10) N03°18'47"W, at a distance of 54.87 feet pass the calculated northeast corner of Lot 49, "Driftwood Falls Estates", from which a ½" iron rod found for the northwest corner of said Lot 49, bears S82°13'14"W, 632.97 feet, continuing for a total distance of 281.50 feet to the calculated southeast corner of Lot 53, "Driftwood Falls Estates", from which a 100d nail set for reference bears N36°16'47"W, 63.79 feet;
- 11) N51°37'43"E, 172.19 feet to the calculated southeast corner of Lot 1, being the southwest corner of Lot 2, "Pier Branch", a subdivision recorded in Volume 4, Page 105 of the said Plat Records, from which a cotton gin spindle set for reference bears N56°35'12"E, 95.36 feet;
- 12) N75°22'14"E, 537.60 feet to the calculated southeast corner of Lot 5, being the southwest corner of Lot 6, "Pier Branch", from which a cotton gin spindle set for reference bears S72°04'16"W, 122.85 feet;
- 13) S89°14'47"E, at 384.70 feet pass the calculated southeast corner of said Lot 6, "Pier Branch" and continuing for a total distance of 405.32 feet to a calculated point on the southwest line of Lot 4, "Onion Creek Ranch", a subdivision recorded in Volume 8, Page 65 of the said Plat Records;
- 14) S66°18'14"E, 117.62 feet to a calculated angle point in the southwest line of said Lot 4, "Onion Creek Ranch";
- 15) S46°24'35"E, at 58.92 feet pass the calculated southeast corner of said Lot 4, being the most westerly corner of Lot 5, "Onion Creek Ranch", for a total distance of 218.49 feet to a calculated angle point, from which a cotton gin spindle set for reference bears N03°41'39"W, 28.36 feet;

- 16) S01°39'52"E, 171.50 feet to the calculated south corner of said Lot 5, being the northwest corner of Lot 6, "Onion Creek Ranch";
- 17) S06°44'04"E, 158.73 feet to a calculated angle point on the west line of said Lot 6, "Onion Creek Ranch", from which a cotton gin spindle set for reference bears S46°29'20"E, 25.10 feet;
- 18) S34°51'10"E, 115.94 feet to the calculated south corner of said Lot 6, being the west corner of Lot 7, "Onion Creek Ranch", from said calculated corner, a ½" iron rod found for the common front corner of Lot 6 and said Lot 7, bears N54°35'38"E, 881.31 feet;
- 19) S34°58'00"E, 249.36 feet to the calculated south corner of said Lot 7, being the west corner of Lot 8, "Onion Creek Ranch", from which a cotton gin spindle set for reference bears S31°45'11"E, 39.10 feet;
- 20) S34°59'43"E, 265.58 feet to the calculated south corner of said Lot 8, being the west corner of Lot 9, "Onion Creek Ranch", from which a cotton gin spindle set for reference bears N15°34'10"W, 44.83 feet;
- 21) S38°03'26"E, 166.09 feet to the calculated south corner of said Lot 9, being the west corner of Lot 10, "Onion Creek Ranch", from which a ½" iron rod found for the common east corner of said Lot 9 and Lot 10, bears N65°58'15"E, 895.71 feet and a cotton gin spindle set for reference bears S17°14'52"E, 88.24 feet;
- 22) S04°43'33"E, 96.82 feet to the calculated southwest corner of said Lot 10, being the northwest corner of Lot 11, "Onion Creek Ranch", from which a ½" iron rod found for the common east corner of said Lot 10 and Lot 11, bears N88°35'17"E, 882.00 feet and a cotton gin spindle set for reference bears S56°06'07"W, 21.91 feet;
- 23) S04°49'35"E, 294.73 feet to an angle point, from which a cotton gin spindle set for reference bears S45°52'36"W, 2.36 feet;
- 24) S08°56'55"W, 526.01 feet to a calculated angle point on the west line of Lot 13, "Onion Creek Ranch", from which a 100d nail set for reference bears S05°50'22"E, 124.61 feet;

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- 25) S11°13'40"E, at 599.04 feet pass the calculated southwest corner of Lot 15, "Onion Creek Ranch", from which a ½" iron rod found for the common east corner of said Lot 15 and Lot 16, "Onion Creek Ranch", bears N88°34'04"E, 826.89 feet, and continuing for a total distance of 636.74 feet to a calculated angle point, from which a 100d nail set for reference bears S59°05'05"W, 41.41 feet;
- 26) S16°48'00"W, 222.06 feet to the calculated southwest corner of said Lot 16, "Onion Creek Ranch";

THENCE, S63°57'25"W, 6.10 feet to a calculated point in the center of Onion Creek for the northwest corner of that 331.26 acre tract conveyed to R. L. Struhall by deed recorded in Volume 226, Page 633 of the said Deed Records;

THENCE, along the west line of the said 331.26 acre tract, being the east line of the 100 acre tract (Tract 2) and the 288 acre tract described above, with the centerline of Onion Creek, for the following thirteen (13) courses:

- 1) S26°38'17"W, 342.88 feet to a calculated point, from which a cotton gin spindle set for reference bears N38°46'17"E, 75.98 feet;
- 2) S28°39'17"W, 315.55 feet to a calculated point, from which a cotton gin spindle set for reference bears N61°51'06"E, 24.65 feet;
- 3) S22°31'17"W, 359.14 feet to a calculated point;
- 4) S16°18'43"E, 467.30 feet to a calculated point;
- 5) S17°10'43"E, 266.81 feet to a calculated point;
- 6) S25°12'43"E, 91.93 feet to a calculated point;
- 7) S34°24'43"E, 293.21 feet to a calculated point;
- 8) S36°58'43"E, 312.92 feet to a calculated point;
- 9) S41°11'43"E, 251.02 feet to a calculated point;
- 10) S52°15'43"E, 120.82 feet to a calculated point;
- 11) S63°34'43"E, 223.03 feet to a calculated point;

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- 12) S10°53'43"E, 179.29 feet to a calculated point;
- 13) S40°43'43"E, 275.34 feet to the calculated southwest corner of the said 331.26 acre tract, being on or near the north line of the aforesaid 100 acre tract;

THENCE, N89°25'17"E, with the south line of the 331.26 acre tract and north line of the said 100 acre tract, at a distance of 474.40 feet pass a ½" iron rod found 0.70 feet to the north for an angle point on the north line of the aforesaid 44.1134 acre tract, at a distance of 2255.00 feet pass a 5/8" iron pipe found for the southeast corner of the said 331.26 acre tract, for a total distance of 2255.80 feet to the calculated point of intersection of this south line with the west right-of-way line of State Highway FM 1826 (80.00' right-of-way), from which a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 573+08.2, bears N25°31'18"E, 282.85 feet, said calculated point being the northeast corner of the 44.1134 acre tract described above;

THENCE, with the common north right-of-way line of State Highway FM 1826 and south line of the said 44.1134 acre tract and the 288 acre tract, for the following fourteen (14) courses:

- 1) S25°31'18"W, 505.14 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 580+96.2, for the point of curvature of a non-tangent curve to the right;
- 2) With the said curve to the right, having a central angle of 67°57'41", a radius of 1105.92 feet, a long chord of 1236.23 feet (chord bears S59°33'48"W), for an arc distance of 1311.78 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 594+56.2;
- 3) N86°27'23"W, 643.70 feet to a calculated angle point 40.00 feet right of State Highway centerline station 601+00, from which a TxDOT Type I concrete monument found bears S37°20'38"W, 0.41 feet;
- 4) N75°08'47"W, 101.98 feet to a calculated angle point 60.00 feet right of State Highway centerline station 602+00.0, from which a TxDOT Type I concrete monument found, bears S59°36'59"W, 0.62 feet;
- 5) N86°28'15"W, at a distance of 188.71 feet pass the calculated southeast corner of the above said 44.1134 acre tract, for a total distance of 399.82 feet to a TxDOT Type I concrete monument found 60.00 feet right of State Highway centerline station 606+00.0;

- 6) S82°14'29"W, 101.93 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 607+00.0;
- 7) N86°24'35"W, 95.03 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 607+94.8, for the point of curvature of a non-tangent curve to the right;
- 8) With the said curve to the right, having a central angle of 22°45'43", a radius of 1392.39 feet, a long chord of 549.53 feet (chord bears N75°04'48"W), for an arc distance of 553.16 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 613+64.0;
- 9) N63°38'40"W, 229.74 feet to a calculated point 40.00 feet right of State Highway centerline station 615+94.5, from which a TxDOT Type I concrete monument found bears N19°18'05"W, 0.71 feet and a TxDOT Type I concrete monument found, 40.00 feet left of centerline station 615+94.5, bears S26°48'33"E, 79.92 feet, said calculated point being the point of curvature of a non-tangent curve to the left;
- 10) With the said curve to the left, having a central angle of 49°34'00", a radius of 1185.92 feet, a long chord of 994.25 feet (chord bears N88°25'32"W), for an arc distance of 1025.94 feet to a TxDOT Type I concrete monument found, 40.00 feet right of State Highway centerline station 625+85.8, from which a TxDOT Type I concrete monument found, being 40.00 feet left of State Highway centerline station 625+85.8, bears S23°04'30"E, 79.56 feet;
- 11) S66°47'28"W, 428.70 feet to a calculated point 40.00 feet right of State Highway centerline station 630+14.5, from which a TxDOT Type I concrete monument found bears N57°25'35"W, 0.42 feet and a found TxDOT Type I concrete monument found 40.00 feet left of State Highway centerline station 630+14.5, bears S23°05'58"E, 80.09 feet, said calculated point being the point of curvature of a non-tangent curve to the right;
- 12) With the said curve to the right, having a central angle of 24°24'00", a radius of 1105.92 feet, a long chord of 467.42 feet (chord bears S78°59'28"W), for an arc distance of 470.97 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 635+02.5;

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- 13) N88°48'32"W, 1094.41 feet to a TxDOT Type I concrete monument found 40.00 feet right of State Highway centerline station 645+97.4, being the point of curvature of a curve to the right;
- 14) With the said curve to the right, having a central angle of 00°53'27", a radius of 5689.58 feet, a long chord of 88.47 feet (chord bears N88°22'12"W), for an arc distance of 88.47 feet to a calculated point for corner, from which a ½" iron rod found for the southeast corner of a 0.50 acre tract conveyed to Horance Seiders by deed recorded in Volume 501, Page 767 of the said Deed Records, bears S10°19'07"E, 0.07 feet;

THENCE, N10°19'07"W, with the east line of the said 0.50 acre tract, at a distance of 513.40 feet pass a ½" iron rod found, for a total distance of 662.29 feet to a ½" iron rod found for the most northerly corner of the aforesaid 0.50 acre tract, being the northeast corner of afore said 12.00 acre tract;

THENCE, S88°20'55"W, with the north line of the 12.00 acre tract, 867.39 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 500.286 acres of land area, SAVE and EXCEPT the following 5.336 acres, being all of that 5.2 acre tract conveyed to Christella Alberado by deed recorded in Volume 302, Page 484 of the said Deed Records and is more particularly described by metes and bounds as follows:

COMMENING at the 5/8" iron rod found for the northeast corner of the 10.283 acre tract described above as the POINT OF REFERENCE:

THENCE, N86°13'55"E, with the south line of the above said 100 acre tract, for a distance of 49.97 feet to a ½" iron rod found for the northwest corner of the said 5.2 acre tract and the POINT OF BEGINNING of the herein described tract;

THENCE, N86°22'32"E, with the north line of the said 5.2 acre tract, 314.54 feet to a ½" iron rod found for an angle point;

THENCE, N87°39'46"E, 436.49 feet to a ½" iron rod found for the northeast corner of the said 5.2 acre tract;

THENCE, S05°36'14"W, 310.15 feet to a 60d nail found in a fence corner post for the southeast corner of the said 5.2 acre tract;

THENCE, S86°53'23"W, 377.12 feet to a ½" iron rod found for an angle point;

500.286 Acres
SAVE AND EXCEPT
5.336 Acres
Page 10 of 10

Fannie A. D. Darden Survey, Abst. No. 664
Freelove Woody Survey No. 23, Abst. No. 20
February 22, 2007
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THENCE, S87°09'18"W, 372.19 feet to a ½" iron rod found for the southwest corner of the said 5.2 acre tract;

THENCE, N05°15'47"E, 311.23 feet to the POINT OF BEGINNING of the herein described tract, CONTAINING within these metes and bounds 5.336 acres of land area, SAVED AND EXCEPTED from the 500.286 acre tract described above, for a total NET AREA of 494.950 acres of land area.

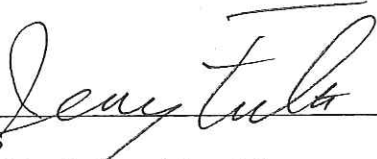
Except as noted, "½ inch iron rod set" denotes a ½ inch iron rod, with a plastic cap marked "Capital Surveying Company, Inc.", set for corner.

The bearings shown in this survey are grid bearings based on the Texas State Plane Coordinate System, NAD 83 (HARN) Datum, South Central Zone, derived by Global Positioning Systems surveys

That I, Jerry Fults, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 22nd day of February, 2007.




Jerry Fults
Registered Professional Land Surveyor
No. 1999- State of Texas

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STATE OF TEXAS §
§
COUNTY OF HAYS §

FIELDNOTE DESCRIPTION of a tract or parcel of land containing 44.1722 acres situated in the Freelove Woody Survey No. 23, Abstract No. 20, Hays County, Texas, being all of that portion of the 100 acre tract lying east of State Highway FM 1826, conveyed to Masa Scott Roberts by the deed recorded in Volume 301, Page 865 of the Deed Records of Hays County, Texas; the herein described 44.1722 acre tract is more particularly described by metes and bounds as follows:

BEGINNING at a ½” iron rod found, with plastic cap marked “Capital Surveying Company, Inc.”, at the intersection of the north line of the said 100 acre tract with the east right-of-way line of State Highway FM 1826 (80’ right-of-way), being the most westerly corner of that 1060.214 acre tract, described as Tract 2, conveyed to LSM Ranch, Ltd. by the deed recorded in Volume 1628, Page 206 of the said Deed Records and bears S25°31’20”W, 242.50 feet from a TxDOT Type I concrete monument found 40.00 feet left of State Highway centerline station 573+08.2;

THENCE, N88°31’49”E, with the south line of the 1060.214 acre tract, 1594.81 feet to a ½” iron rod found for an interior corner of the said 1060.214 acre tract and the northeast corner of the said 100 acre tract;

THENCE, S00°59’15”E, at a distance of 523.55 feet pass a ½” iron rod, with plastic cap marked “4542”, for a southwest corner of the aforesaid 1060.214 acre tract and an interior northwest corner of that 700.03 acre tract conveyed to John Richard Rutherford by the deed recorded in Volume 1214, Page 548 of the said Deed Records, and continuing for a total distance of 1039.05 feet to a 60d nail found in a fence corner post for an interior corner of the said 700.03 acre tract and the southeast corner of the aforesaid 100 acre tract;

THENCE, S88°43’28”W, with the common line between the 700.03 acre tract and the 100 acre tract, at a distance of 2005.26 feet pass a ½” iron rod found for the most westerly corner of the said 700.03 acre tract, for a total distance of 2005.48 feet to the calculated intersection of this common line with the northeast right-of-way line of State Highway FM 967 (80’ right-of-way);

THENCE, N41°10’54”W, with the northeast right-of-way line of State Highway FM 967, 85.90 feet to a TxDOT Type I concrete monument found at an angle point;

THENCE, N01°43’24”W, continuing with the northeast right-of-way line of State Highway FM 967, for a distance of 110.39 feet to a TxDOT Type I concrete monument found for an angle point at the existing right-of-way intersection with State Highway FM 1826;

THENCE, N30°05'26"E, leaving the northeast right-of-way line of State Highway FM 967, with the occupied east right-of-way line of State Highway FM 1826, for a distance of 435.14 feet to a TxDOT Type I concrete monument found 40.00 feet left of State Highway centerline station 580+96.2;

THENCE, N25°31'22"E, continuing across the 100 acre tract, with the east right-of-way line of State Highway FM 1826, for a distance of 544.25 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 44.1722 acres of land area;

The bearings shown in this survey are grid bearings based on the Texas State Plane Coordinate System, NAD 83 (HARN) Datum, South Central Zone, derived by Global Positioning Systems surveys

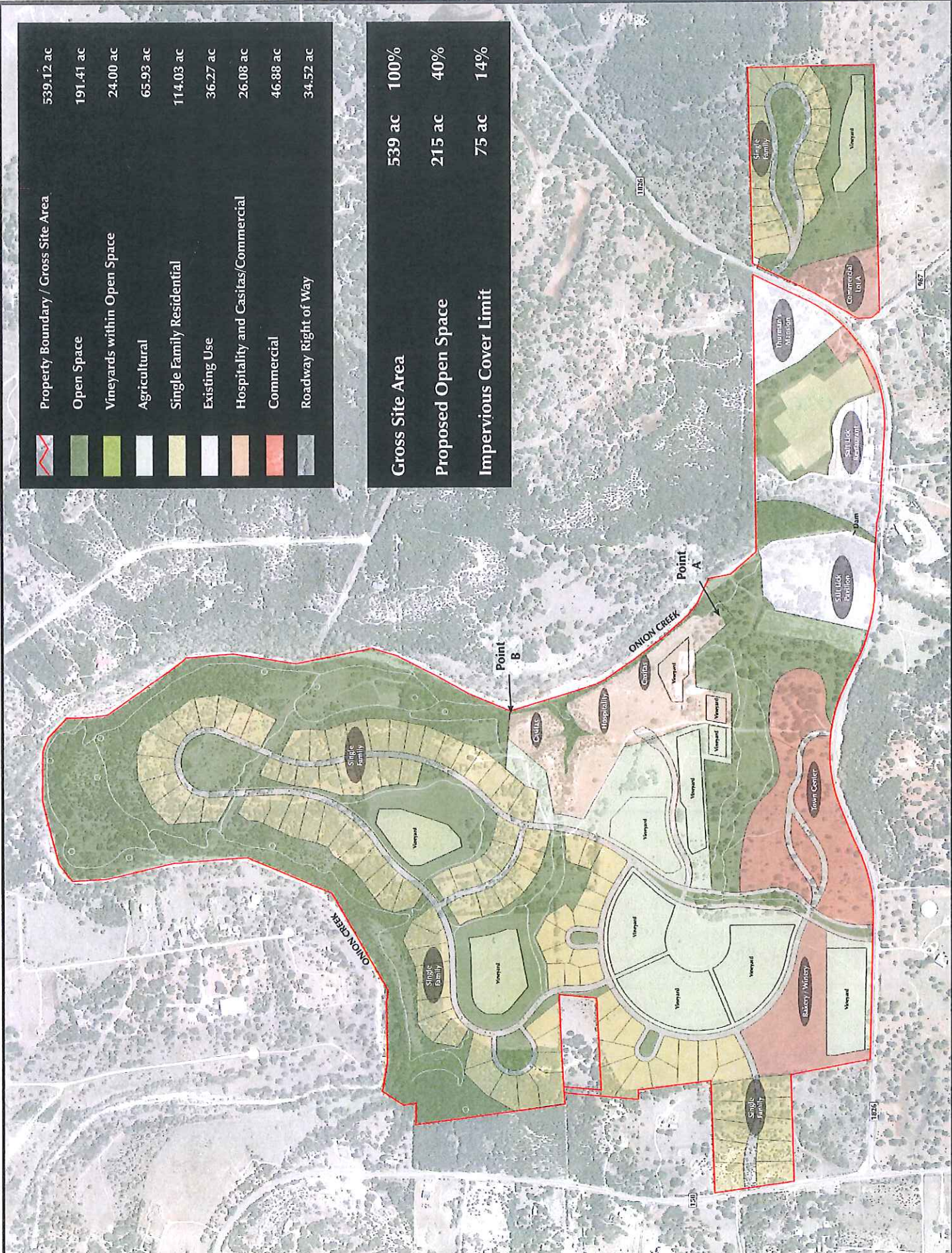
That I, Jerry Fults, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 22nd day of February, 2007.



Jerry Fults

Jerry Fults
Registered Professional Land Surveyor
No. 1999- State of Texas



	Property Boundary / Gross Site Area	539.12 ac
	Open Space	191.41 ac
	Vineyards within Open Space	24.00 ac
	Agricultural	65.93 ac
	Single Family Residential	114.03 ac
	Existing Use	36.27 ac
	Hospitality and Casitas/Commercial	26.08 ac
	Commercial	46.88 ac
	Roadway Right of Way	34.52 ac

Gross Site Area	539 ac	100%
Proposed Open Space	215 ac	40%
Impervious Cover Limit	75 ac	14%

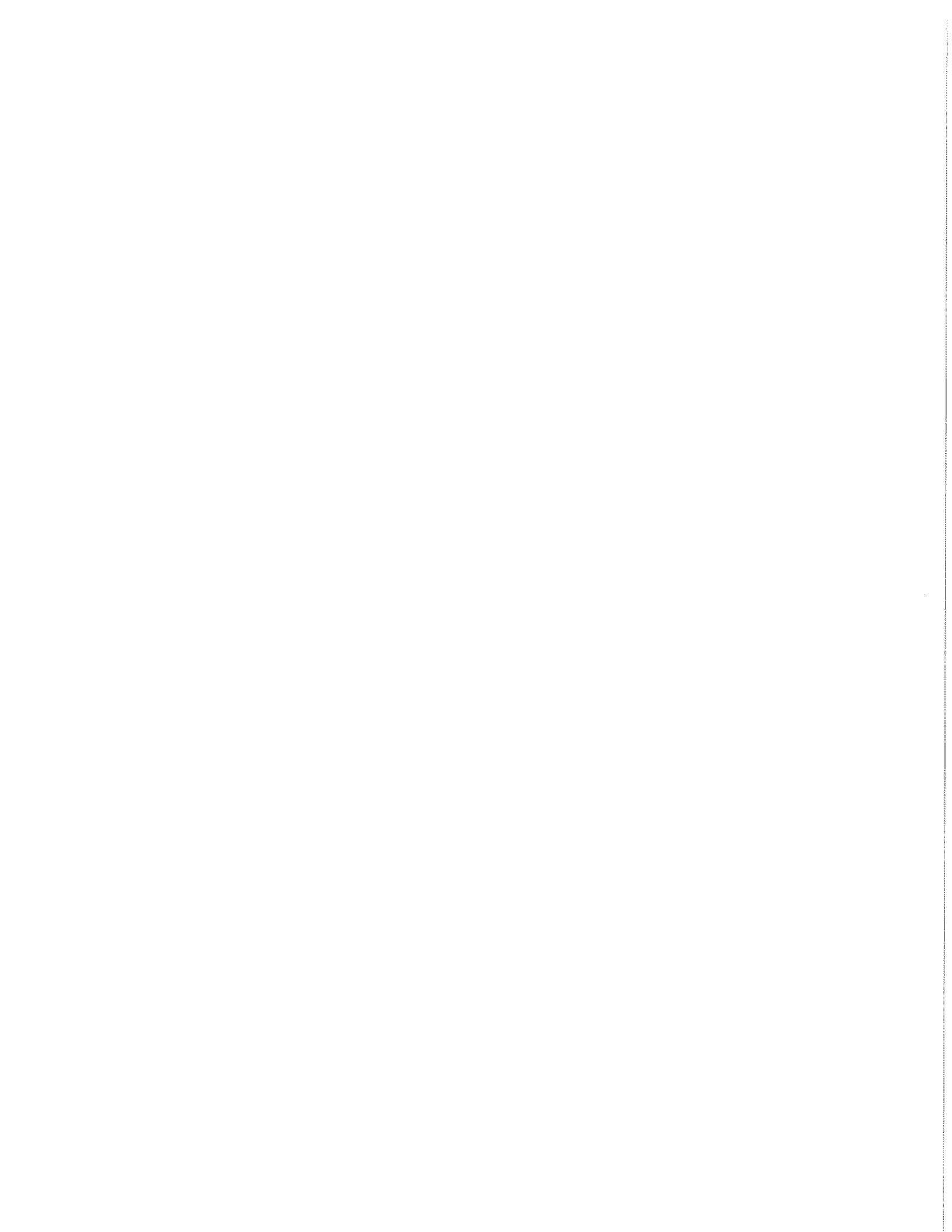
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 Aerial Photography: Aerial Services, Inc.
 Property: Driftwood, LLC



Exhibit B
 Conceptual Land Use Plan

Driftwood



Gross Site Area 539.12 acres
Total Proposed Open Space 215.37 acres
Percentage of Gross Site Area 40%

*The exact boundaries of the 33-acre publicly accessible open space between the Town Center and the Lodge Spa have not been determined. The boundary determination and the dedication of this open space shall occur upon the submission of a plat for the Town Center or Lodge Spa, whichever occurs first.



Property Boundary
Proposed Open Space
Private Lot

Exhibit B - 1
Proposed Open Space

Driftwood

Map 2017
Prepared by: [Logo]

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Driftwood
EXHIBIT C
Alternative Project Standards

Subdivision Ordinance

1. Variance: Section 4.8(l)10 and Section 4.9.1(d) Identification of Trees: Only individual trees over twelve inches in diameter that are to be removed as part of the roadway and utility construction process will be identified.
2. Variance: Section 11 Street Geometric Design Standards: Streets will be constructed according to the design standards as set out in Exhibit C-1 (which are variances from the TCSS Manual).
3. Variance: Section 14.6 Minimum Lot Sizes in Extraterritorial Jurisdiction: The minimum lot size for residential lots shall be one half acre. The average residential lot size, including open space, shall be greater than 1.5 acres.
3. Alternative Standard: Private streets shall be allowed within the development.
4. Alternative Standard: Gated streets shall be allowed within the development.
5. Alternative Standard: The maximum block length may exceed 2,000 feet.
6. Alternative Standard: Shared Access Drives may serve up to eight lots.
7. Alternative Standard: Up to five wildlife exclusion devices within the roadways shall be permitted to protect the vineyards and other agricultural uses.

Water Quality Protection Ordinance

1. Section 5 Performance Standards: The project meets the Pollutant Load performance standards without further engineering calculations or submittals.
2. Variance: Section 7.4(k) Allowable Development in Water Quality Buffer Zone: Excavation of sand and gravel that accumulates in the creek bed in the backwater from the dam on Onion Creek shall be allowed when the creek is not flowing.
3. Variance: Section 7.2 Water Quality Buffer Zone determined according to size of drainage basin: The buffer zone along Onion Creek from Point A to Point B shall end at the top of the bluff. Following suitable results from geo-structural engineering analysis of this area, buildings and attendant features, but no parking lots, may occupy a maximum of fifty percent (50 %) of the length of this section of the bluff.
4. Alternative Standard: Hike and bike trails shall be permitted within the buffer zones.

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Site Development Ordinance

Variance: Section 13.2 Cut and Fill: Cut and fill may exceed four feet (4) for agricultural irrigation ponds, water quality ponds (wet and dry) and activities occurring under section 4.5 of the Agreement.

Sign Ordinance

Variance: Section VI. Sign Standards, Location: Owner may install 3 off premise free standing monument signs located on the Property, the top of which shall not be more than 10 feet in height.

Parkland Dedication Ordinance

Alternative Standard: The open space provided within the Property meets the requirements of the Parkland Dedication Ordinance.

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Justification for the Alternative Project Standards and responses to the required findings:

1. That there are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of the land;

The Owner proposes to develop a high quality, low density mixed use project that is sensitive to the constraints and assets of the site. The site has frontage on three arterial roadways (RR 1826, RR 967 and RR 150). The site is also bounded by over 13,000 feet of frontage on the main channel of Onion Creek with its associated flood plain. Portions of the site have been cleared for historic agricultural uses. Other portions of the site are densely wooded. Parts of the site are more open grassland with scattered specimen trees.

The proposed plan proposes a mixture of low density residential use, agricultural uses and small scale commercial development. The goal is to retain as much open space as possible to preserve a more rural character of development in a part of the ETJ where higher densities are not appropriate. In order to assure this result the impervious cover is to be limited to no more than fourteen percent (14%) of the site. This impervious cover limit is exceptionally low in light of the access of the site to arterial roadways that provide the potential for more extensive commercial development.

The project furthers the City's goals of promoting economic development and tourism. The vineyards, winery, lodge, spa, restaurant and event facilities will create an environment that will draw people to the area as well as create jobs for area residents. The vineyards will promote the concept of agricultural uses remaining a viable component of the northern Hays County economy as well as preserving open space.

The development goals just described cannot be met with a literal application of the City's regulations in light of the site characteristics and constraints.

2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;

The applicant is proposing a development of a much lower intensity than existing regulations would allow and that the access to arterial roadways would reasonably support. The variances are necessary to make it feasible to forgo the more dense development potential of the tract. The variances also provide for an increased level of environmental protection and habitat preservation.

3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area;

A low density, high quality development will establish a positive precedent for the area. The low density will minimize demands on future infrastructure requirements while enhancing the value of surrounding properties. Future tax base will be high while the demand for services will be low.

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4. That the granting of the variances will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this Chapter;

The granting of the variances will support the orderly development of other land in the area. The substantial compliance of the proposed development with the recently completed Regional Water Quality Protection Plan is a precedent for this part of the ETJ that should be actively encouraged on the part of other properties. From a traffic circulation perspective no connection of proposed roadways to adjacent properties is either appropriate or proposed, thus their orderly subdivision is not affected.

5. The waiver will enable the applicant to preserve more native trees, provide more open space, or ensure more wildlife preservation than would be possible complying with the strict mandates of this Chapter.

The key concept underlying the residential portion of the project is to maximize common open space. The reduction in minimum lot size will assure more area remains in a natural state than if it were included within a lot. Increased habitat for wildlife is consequently assured as well as the preservation of native trees. The access to a large amount of common open space should more than offset the reduced lot size from the perspective of the lot buyer.

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Driftwood
EXHIBIT C-1
Street Design Standards
 May 22, 2007

Code Section	Code Requirement	Proposed Requirement	
TCSS MANUAL 2.3.2. Hays County Subdivision and Development Regulations The road standards for the City of Dripping Springs, TX will be governed by Table 7.3, Summary of Hays County Road Standards.	Country Lane		
	Design Speed (1)	25 mph	20 mph
	Minimum ROW Width	50'	40'
	Minimum Centerline Radius (1)	200'	80'
	Minimum Tangent Length Between Reverse Curves (1)	50'	0'
	Minimum Radius for Edge of Pavement at Intersections (2)	25'	10'
	Minimum Court (Cul-de-sac) Inside Pavement Radius (2)	35'	25'
	Minimum Court (Cul-de-sac) ROW Radius (2)	65'	50'
	Local Street		
	Design Speed (1)	25 mph	20 mph
	Minimum ROW Width	60'	50'
	Width of Traveled Way	20'	18' undivided 2 @ 10' divided
	Minimum Centerline Radius (1)	300'	100'
	Minimum Tangent Length Between Reverse Curves (1)	100'	0'
	Minimum Radius for Edge of Pavement at Intersections (2)	25'	10'
	Minimum Court (Cul-de-sac) Inside Pavement Radius (2)	45'	25'
	Minor Collector		
	Design Speed (1)	35 mph	30 mph
	Minimum ROW Width	60'	50'
	Width of Traveled Way	22'	22' undivided 2 @ 11' divided
	Minimum Centerline Radius (1)	375'	200'
	Minimum Tangent Length Between Reverse Curves (1)	150'	50'
	Minimum Radius for Edge of Pavement at Intersections (2)	25'	15'
	Major Collector		
	Design Speed (1)	45 mph	30 mph
	Minimum ROW Width	70'	50'
	Width of Traveled Way	24'	24' undivided 2 @ 12' divided
	Minimum Centerline Radius (1)	675'	200'
	Minimum Tangent Length Between Reverse Curves (1)	150'	100'
	Minimum Radius for Edge of Pavement at Intersections (2)	25'	15'

* ADT - Average Daily Trips per single family home is presumed to be 10 vehicle trips per day.

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Driftwood
EXHIBIT C-1
Street Design Standards
May 22, 2007

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NOTES:

- (1) Being a gated neighborhood, without significant numbers of external vehicle traffic and without any cut-through traffic, we want to have a slower internal roadway speed to accommodate safer pedestrian travel and to be in keeping with the rural character. With the lower design speed we can safely reduce the items so marked (1) and therefore propose those alternative standards.
- (2) Items marked (2) are improved by and benefit from the lower design speed and they also reduce project impervious cover in areas where no longer needed due to slower traffic.

Other alternative design standards

- Divided lanes with medians to enhance safety of contra-flowing traffic
- Implementation of ribbon curb to preserve the rural feel of the area.
- Shared Driveways
- Traffic Calming Devices (Roundabouts, Chicanes, Neckdowns, Etc.)

DRIFTWOOD COMMERCIAL LANDSCAPE DESIGN CRITERIA

The information in this Exhibit is intended to define the technical design criteria needed to achieve the landscape policy goals for all commercial uses located within the Driftwood project.

The Plant Guide for this Exhibit (the "Guide") is Native and Adapted Landscape Plants by the Texas Coop Extension at Texas A&M University and the City of Austin which is available free at many garden centers, and is featured on the site growgreen.org.

The following uses do not have to comply with the Landscape Design Criteria:

- Single family residential dwellings, though St. Augustine grass is not permitted on residential lots.
- Existing St. Augustine turf may be maintained at Thurman's Mansion and the Salt Lick Pavilion.
- Limited areas of St. Augustine may be installed in locations designed to serve weddings and similar functions.

A. Landscape Area.

At least 20 percent of street-side yard must be landscaped. Grass areas not using native or drought tolerant lawn grasses in the Guide are not credited as landscaped area except in shaded areas that receive less than six hours of sunlight per day. St. Augustine grass shall not be permitted.

B. Determining Street-side Yard.

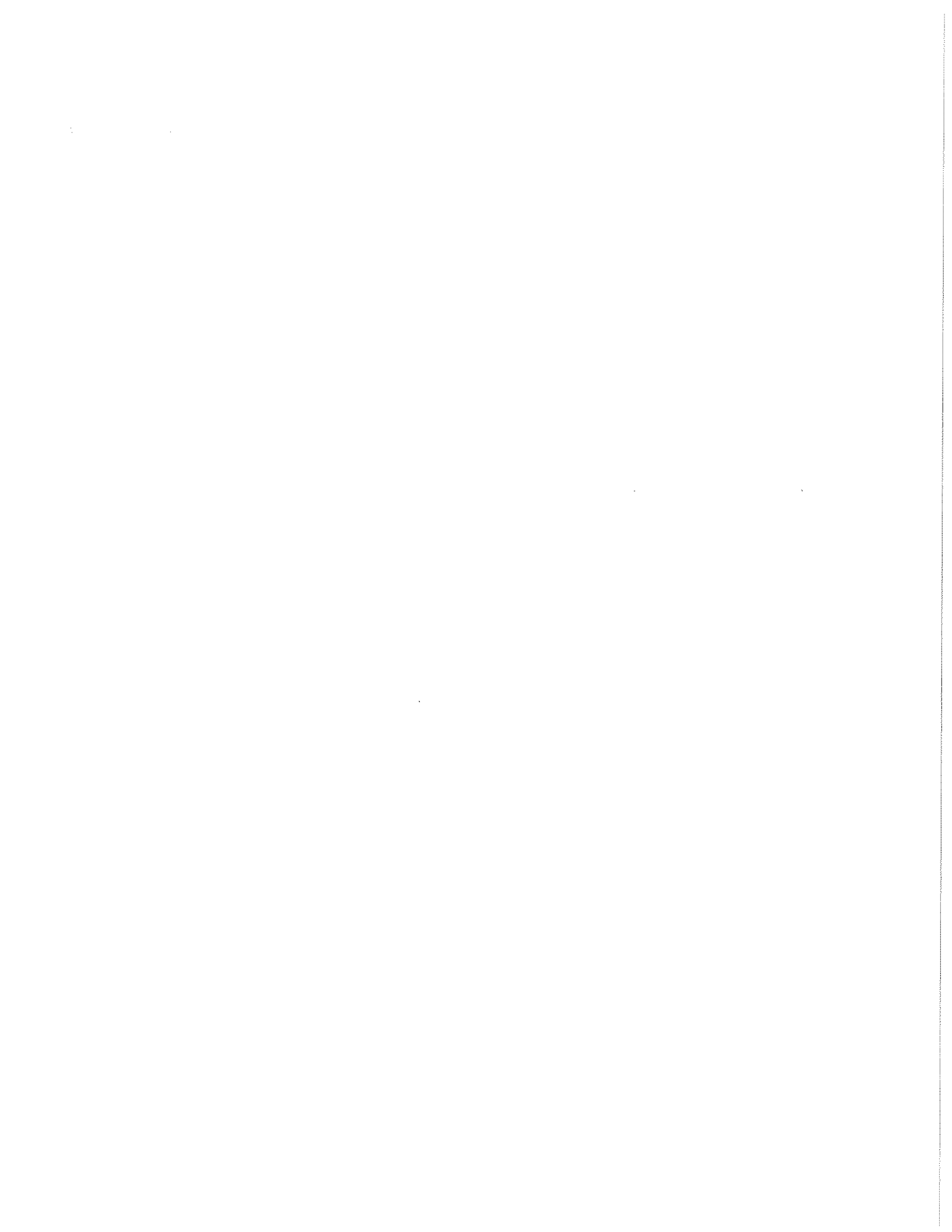
The exact configuration of a street yard (or yards) on a site will depend on how a number of factors interrelate on that site. Among these factors are:

- Type and location of building walls.
- Number of streets that border the site.
- Number, size, and orientation of buildings on the site.

The street yard area is calculated by finding the total lot square footage which lies between the street right of way line and the front wall of a building or buildings on a site. This street yard boundary extends from the outward most corners of the front wall, parallel to the street until it intersects with the side property lines.

C. Drip Line Credit.

In order to encourage the preservation and continued growth of smaller trees, the following credit toward landscape area is possible. Each square foot of landscape area which is permeable and within the area encompassed by the drip line of a tree at least two (2) inches in trunk diameter measured at 4-½ feet above the ground, shall count as one and one-quarter (1.25) square feet of the requirement for landscape area. In no case can



the actual landscape area in the street yard of a lot be less than 1/3 of the required 20 percent.

D. Buffering.

Buffering is a site specific requirement that should be evaluated based on viewer distance and angle of view from the areas or site features requiring buffering. Buffer design should also consider traffic movement and safety and the amount of view obstruction needed and the type and mixture of design elements used in the buffer. To be considered effective, a combination of buffering elements should be used to provide a partial view obstruction of those items to be buffered (pavement, parked cars, etc.). Landscape buffers should be planted in a permeable landscape area at least eight (8) feet wide, measured from inside of curb or pavement to the property line.

E. Plant Selection

At least 90% of the areas shall be planted with species from the Guide. Up to 10% of the plants may be of a non-preferred variety as long as they are grouped together in a suitable area and can be irrigated separately.

F. Turf Selection and Limitations.

Areas that receive more than six (6) hours of sunlight per day shall be planted with turf species from the Guide. St. Augustine is not permitted

G. Soil Conditioning and Mulching

The following soil conditioning and mulching requirements apply where there is less than six inches of native soil:

A minimum of 2 inches of organic mulch shall be added in non-turf areas to the soil surface after planting.

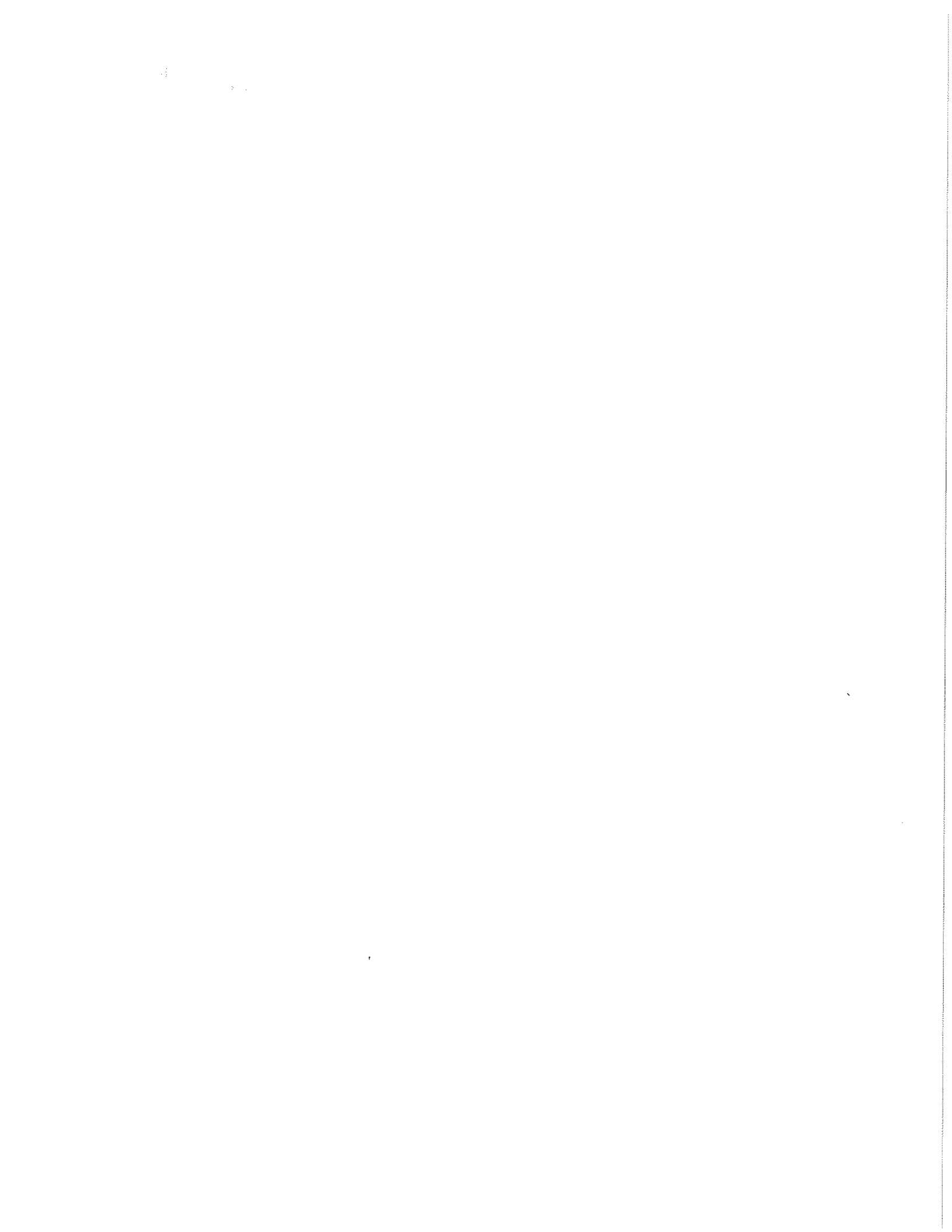
Non-porous material such as sheet plastic shall not be placed under the mulch.

A minimum of 4 inches of permeable soil, native or imported, shall be required for turf and landscaped areas. The organic matter content of such soils shall be not less than 5% by dry weight.

H. Tree Planting Areas

Tree planting areas are to be provided with a minimum of 12 inches of friable native loam soil (max. 40% clay, minimum 5% organic matter). Planting in relatively undisturbed existing native soils is encouraged. Soil to a minimum depth of 12 inches is required within the entire landscape median or peninsula. All other planting areas must have a minimum soil depth of 12 inches within a radius of six feet from the tree trunk.

Trees are not to be planted in un-amended caliche, solid rock, or in soils whose texture has been compacted by construction equipment. Areas of compaction which have been subsequently amended with 12 inches of friable native soil are suitable for planting.



I. Irrigation of Landscape Areas

The Owner shall be responsible for the irrigation of all required landscape areas and plant materials, utilizing one or a combination of the following methods:

- An automatic or manual underground irrigation system (conventional spray, bubblers, drip, emitters, drip tubing, porous pipe and the like with turf zones separated from planting zones unless otherwise approved; or
- A hose attachment must be located within 100 feet of all required landscape areas and plant materials where there is no road or parking pavement between the hose attachment and landscape area and the site plan area is no longer than 0.5 acre; or
- Landscape areas planted with native grasses and wildflowers may use a temporary and above ground irrigation system to provide irrigation for the first two (2) growing seasons.

The irrigation methods used shall:

- Provide a moisture level in an amount and frequency adequate to sustain growth of plant materials on a permanent basis;
- Be in place and operational at the time of the site completion inspection; and
- Be maintained and kept operational at all times to provide for efficient water distribution.

Landscape working plans shall indicate, by a detail, a drawing or by specification, in a note on the site plan, the nature and location of irrigation which will be used, specific enough to show that adequate irrigation will be provided to all required landscape areas and plant materials and that there is no disturbance to the critical root zones of existing trees.

No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.

Automatic irrigation systems shall be designed and installed by a Texas licensed irrigator.

J. Landscape Plan

The landscape plan shall be submitted with the site plan and shall have the seal and certification of a landscape architect, architect, professional engineer or full time building designer for projects over one-half acre in size, and the seal and certificate of a landscape architect or architect for all projects over one acre in size, that the plan meets these criteria.

K. Alternative Plan Proposals

An applicant or owner can submit an alternative design which proves to be as good or better than strict compliance with the basic landscape criteria. Alternative proposals should be clearly identified on the landscape plans and the site plan application should include a letter outlining the alternative proposal. Review of the alternative proposal will be in conjunction with the site plan review.

L. Automated Irrigation System

The installation of an automatic conventional spray type irrigation system is allowed, however, the installation of an automatic water saving drip irrigation system for all landscaped areas is strongly encouraged.

M. Preservation of Existing Vegetation:

Consideration will be given to outstanding designs that preserve natural vegetation beyond what is required by this criteria. This is a difficult concept to quantify and will be considered based on the merits of the proposal and the site constraints.

N Integrated Pest Management Plan (IPM)

An IPM will be submitted along with the landscape plan and will be reviewed at the site plan stage of the project.

O. Rainwater collection and beneficial reuse.

Rainwater harvesting and reuse for site irrigation will be required on at least 50% of the roof area of each building, or on 50% of the total roof area in a site plan. Rain water tanks and cisterns will not be considered to be impervious cover and they shall be allowed to be installed above ground and to be located at roof/gutter downspouts or in another convenient location to facilitate the goal of rainwater collection and beneficial reuse.

P. Integrated Low Impact Development (LID) stormwater management practices:

Integrating LID practices for the purpose of addressing both pollutant removal for stormwater and protection of predevelopment hydrological functions, will be given consideration in alternative landscape design criteria. Functional LID landscape designs will be assessed for effectiveness and positive landscape points will be determined accordingly.

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Exhibit "E"
ANNEXATION PETITION

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RECORDING PURPOSES**

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STATE OF TEXAS
COUNTY OF HAYS

§
§
§

PETITION FOR VOLUNTARY ANNEXATION

To the Mayor and City Council of the City of Dripping Springs:

In accordance with Section 43.032 of the Texas Local Government Code or such other provision of the Local Government Code authorizing annexation by the City of Dripping Springs (“the City”), the undersigned owners (“the Owners”) of the tract of land described below (the “tract”) hereby petition the City of Dripping Springs to extend the present incorporated municipal boundaries (i.e., City limits) so as to include in, and annex as a part of, the City of Dripping Springs (“the City”), the property, which may be annexed in portions or in its entirety through separate annexation proceedings, as necessary and being more particularly described by metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein for all purposes, subject to the restrictions and requirements of the Development Agreement between the Owners and the City attached hereto as Exhibit “B.”

The Owners certify and swear that the tract is:

1. adjacent to the municipal boundary; and
2. not currently being served with water or sewer service from a governmental entity.

The Owners further certify that they have entered into the Development Agreement with the City attached hereto and incorporated herein for all purposes as Exhibit “B.” Said Development Agreement allows, among other things:

1. a facility or service, including optional, backup, emergency, mutual aid, or supplementary facilities or services, to be provided to the area or any part of the area by the City, a landowner, or by any other person;
2. standards for requesting and receiving any form of City consent or approval required to perform an activity;
3. remedies for breach of the Agreement; and
4. the amendment, renewal, extension, termination, or any other modification of the Agreement.

The Owners certify and swear that this petition is signed and acknowledged by each and every person and entity owning said tract or having an interest in any part thereof.

11 10 10
12 11 11 11 11

Name

Date

Name

Date

This instrument was acknowledged before me by _____
_____ on this the ___ day of _____, 20__.

Notary Public, State of Texas
My commission expires: _____

10/10/10

Exhibit "A"

Property Description

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RECORDING PURPOSES**

Exhibit "B"

Development Agreement

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RECORDING PURPOSES**

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Exhibit "F"
ANNEXATION PETITION FOR COMMERCIAL PROPERTIES

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RECORDING PURPOSES**

We certify and swear that this petition is signed and acknowledged by each and every person and/or entity owning the property described in Exhibit "A" or having an interest in any part thereof.

Name

Date

Name

Date

This instrument was acknowledged before me by _____
_____ on this the ___ day of _____, 20__.

Notary Public, State of Texas
My commission expires: _____

Exhibit "A"

Property Description

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RECORDING PURPOSES**

Exhibit "B"

Development Agreement

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RECORDING PURPOSES**

80011883 04R 3381 172
Vol Pa

Gross Site Area 539.12 acres
Total Proposed Open Space 215.37 acres
Percentage of Gross Site Area 40%

*The exact boundaries of the 33-acre publicly accessible open space between the Town Center and the LodgeSpa have not been determined. The boundary determination and the dedication of this open space shall occur upon the submission of a plat for the Town Center or LodgeSpa, whichever occurs first.



Property Boundary
Proposed Open Space
Private Lot

Exhibit B - 1
Proposed Open Space

Driftwood

May 2017
0 300' 600'
OPR 3381
80011882
Created by: [unreadable]
Produced by: [unreadable]

