

PLANNING & ZONING COMMISSION REGULAR MEETING

City of Dripping Springs Council Chambers, 511 Mercer St, Dripping Springs, TX

Tuesday, September 28, 2021 at 6:30 PM

Agenda

CALL TO ORDER AND ROLL CALL

Commission Members

Mim James, Chair James Martin, Vice Chair Christian Bourguignon John McIntosh Doug Crosson Evelyn Strong Tammie Williamson

Staff, Consultants & Appointed/Elected Officials

City Administrator Michelle Fischer Deputy City Administrator Ginger Faught City Attorney Laura Mueller City Secretary Andrea Cunningham Planning Director Howard Koontz Senior Planner Tory Carpenter City Engineer Chad Gilpin

PLEDGE OF ALLEGIANCE

PRESENTATION OF CITIZENS

A member of the public who desires to address the Commission regarding any item on an agenda for an open meeting may do so at presentation of citizens before an item or at a public hearing for an item during the Commission's consideration of that item. Citizens wishing to discuss matters not contained within the current agenda may do so, but only during the time allotted for presentation of citizens. Speakers are allowed two (2) minutes to speak during presentation of citizens or during each public hearing. Speakers may not cede or pool time. Members of the public requiring the assistance of a translator will be given twice the amount of time as a member of the public who does not require the assistance of a translator to address the Commission. It is the request of the Commission that members of the public wishing to speak on item(s) on the agenda with a noticed Public Hearing hold their comments until the item(s) are presented for consideration. Speakers are encouraged to sign in. Anyone may request a copy of the City's policy on presentation of citizens from the city secretary. By law no action may be taken during Presentation of Citizens.

CONSENT AGENDA

The following items are anticipated to require little or no individualized discussion due to their nature being clerical, ministerial, mundane or routine. In an effort to enhance the efficiency of Planning & Zoning Commission meetings, it is intended that these items will be acted upon by the Planning & Zoning

Commission with a single motion because no public hearing or determination is necessary. However, a Planning & Zoning Commission Member or citizen may request separate deliberation for a specific item, in which event those items will be removed from the consent agenda prior to the Planning & Zoning Commission voting on the consent agenda as a collective, singular item. Prior to voting on the consent agenda, the Planning & Zoning Commission may add additional items that are listed elsewhere on the same agenda.

- **<u>1.</u>** Discuss and consider approval of the September 28, 2021, Planning & Zoning Commission regular meeting minutes.
- 2. Approval of SUB2021-0044: an application for a final plat for Driftwood Phase 1 Section 3 Final Plat for a 42.17 acre tract located along the west side of Thurman Roberts Way north of its intersection with RM 1826 of Driftwood 967 Phase 2, 42.17 acres out of Freelove Woody Sur, Abs 20, Hays County, Texas. *Applicant: Tony Miller, P.E., Murfee Engineering Company, Inc.*
- **3.** Disapproval of SUB2021-0051: an application for a preliminary plat for the Hardy T Subdivision for a 79.61 acre tract out of the Benjamin F Hannah Survey, Hays County, Texas. *Applicant: Brian Estes, Civil and Environmental Consultants, Inc.*

BUSINESS

- **4.** Public hearing and recommendation regarding VAR2021-0012: a Variance Application to consider a variance to Section 14.7 Minimum lot or unit sizes in city limits of Chapter 28, Exhibit A Subdivision Ordinance to allow a smaller lot than authorized at the 709 Business Park Subdivision at 711 W Hwy 290, Dripping Springs, Texas. *Applicant: Randy Hutto.*
 - a. Presentationb. Staff Reportc. Public Hearing
 - d. Variance

PLANNING & DEVELOPMENT REPORTS

- **<u>5.</u>** Planning Department Report
- **<u>6.</u>** Presentation on separation of properties by condominium or other means as it relates to Subdivision and related ordinances. *Presenter: Laura Mueller, City Attorney*

EXECUTIVE SESSION

The Planning & Zoning Commission for the City of Dripping Springs has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 Deliberations about Gifts and Donations), 551.074 Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development). The Planning & Zoning Commission for the City of Dripping Springs may act on any item listed in Executive Session in Open Session or move any item from Executive Session to Open Session for action.

7. Consultation with City Attorney on legal issues related to subdivision requirements, property separations, and condominium regimes. *Consultation with Attorney*, 551.071

UPCOMING MEETINGS

Planning & Zoning Commission Meetings

October 12, 2021, at 6:30 p.m. October 26, 2021, at 6:30 p.m.

City Council & BOA Meetings

October 5, 2021, at 6:00 p.m. (CC & BOA) October 19, 2021, at 6:00 p.m. (CC) November 2, 2021, at 6:00 p.m. (CC & BOA) November 16, 2021, at 6:00 p.m. (CC)

ADJOURN

TEXAS OPEN MEETINGS ACT PUBLIC NOTIFICATION & POSTING OF MEETING

All agenda items listed above are eligible for discussion and action unless otherwise specifically noted. This notice of meeting is posted in accordance with Chapter 551, Government Code, Vernon's Texas Codes. Annotated. In addition, the Commission may consider a vote to excuse the absence of any Commissioner for absence from this meeting.

I certify that this notice of meeting was posted at the City of Dripping Springs City Hall and website, www.cityofdrippingsprings.com, on September 24, 2021, at 1:15 p.m.

City Secretary

This facility is wheelchair accessible. Accessible parking spaces are available. Requests for auxiliary aids and services must be made 48 hours prior to this meeting by calling (512) 858-4725.



PLANNING & ZONING COMMISSION REGULAR MEETING City of Dripping Springs Council Chambers, 511 Mercer St, Dripping Springs, TX Tuesday, September 14, 2021 at 6:30 PM

MINUTES

CALL TO ORDER AND ROLL CALL

With a quorum of the Commission present, Chair James called the meeting to order at 6:30 p.m.

Commission Members present were:

Mim James, Chair Christian Bourguignon Doug Crosson Evelyn Strong Tammie Williamson

Commission Members absent were:

James Martin, Vice Chair John McIntosh

Staff, Consultants & Appointed/Elected Officials present were:

City Attorney Laura Mueller City Secretary Andrea Cunningham Planning Director Howard Koontz Senior Planner Tory Carpenter Council Member Place 5 Sherrie Parks

PLEDGE OF ALLEGIANCE

Chair James led the Pledge of Allegiance to the Flag.

PRESENTATION OF CITIZENS

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presentation of citizens from the city secretary. By law no action may be taken during Presentation of Citizens.

No one spoke during Presentation of Citizens.

CONSENT AGENDA

The following items are anticipated to require little or no individualized discussion due to their nature being clerical, ministerial, mundane or routine. In an effort to enhance the efficiency of Planning & Zoning Commission meetings, it is intended that these items will be acted upon by the Planning & Zoning Commission with a single motion because no public hearing or determination is necessary. However, a Planning & Zoning Commission Member or citizen may request separate deliberation for a specific item, in which event those items will be removed from the consent agenda prior to the Planning & Zoning Commission voting on the consent agenda as a collective, singular item. Prior to voting on the consent agenda, the Planning & Zoning Commission may add additional items that are listed elsewhere on the same agenda.

Via unanimous consent, Agenda Item 1 was considered individually, and Items 2 and 4, and Items 3 and 5 were considered concurrently.

- 1. Approval of the August 24, 2021, Planning & Zoning Commission regular meeting minutes.
- 2. Disapproval of SUB2021-0012: an application to consider the final plat of Caliterra Phase 4 Section 12, an approximately 65.964 acres of land situated in the Philip A. Smith Survey No. 22, Abstract No. 415, in Hays County, Texas. *Applicant: Bill Couch, Carlson Brigance and Doering, Inc.*
- 3. Disapproval of SUB2021-0046: an application to consider the final plat of Driftwood Golf and Ranch Club Phase 3, an approximately 56.3328 acres of land situated in the Freelove Woody Survey No. 23, Abstract No. 20, in Hays County, Texas. Applicant: Ronee Gilbert, Murfee Engineering Company, Inc.
- 4. Approval of SUB2021-0040: an application to consider the final plat of Parten Ranch Phase 2B, an approximately 60.41 acres of land situated in the Seaborn J. Whatley & Lamar Moore Surveys, Abstract No. 323, in Hays County, Texas. *Applicant: Lauren Crone, LJA Engineering.*
- 5. Disapproval of SUB2021-0048: an application to consider the final plat of Driftwood Phase 1 Section 4, an approximately 4.723 acres of land situated in the Fannie A. Darden Survey, Tract A, in Hays County, Texas. *Applicant: Stephen Delgado, Atwell, LLC.*

A motion was made by Commissioner Bourguignon to approve the August 24, 2021, Planning & Zoning Commission regular meeting minutes. Commissioner Crosson seconded the motion which carried 4 to 0 to 1, with Commissioner Strong abstaining.

A motion was made by Commissioner Williamson to approve Consent Agenda Items 2 and 4. Commissioner Strong seconded the motion which carried unanimously 5 to 0.

A motion was made by Commissioner Williamson to approve Consent Agenda Items 3 and 5. Commissioner Bourguignon seconded the motion which carried 4 to 0 to 1, with Commissioner Crosson abstaining.

BUSINESS

6. Presentation and discussion regarding the 2021 Texas Legislative Update.

Laura Mueller gave the presentation which is on file.

No action was taken regarding this item.

PLANNING & DEVELOPMENT REPORTS

There were no reports presented.

EXECUTIVE SESSION

The Planning & Zoning Commission for the City of Dripping Springs has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 Deliberations about Gifts and Donations), 551.074 Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development). The Planning & Zoning Commission for the City of Dripping Springs may act on any item listed in Executive Session in Open Session or move any item from Executive Session to Open Session for action.

The Commission did not meet in Executive Session.

UPCOMING MEETINGS

Planning & Zoning Commission Meetings

September 28, 2021, at 6:30 p.m. October 12, 2021, at 6:30 p.m October 26, 2021, at 6:30 p.m

City Council Meetings September 21, 2021, at 6:00 p.m. October 5, 2021, at 6:00 p.m. October 19, 2021, at 6:00 p.m.

ADJOURN

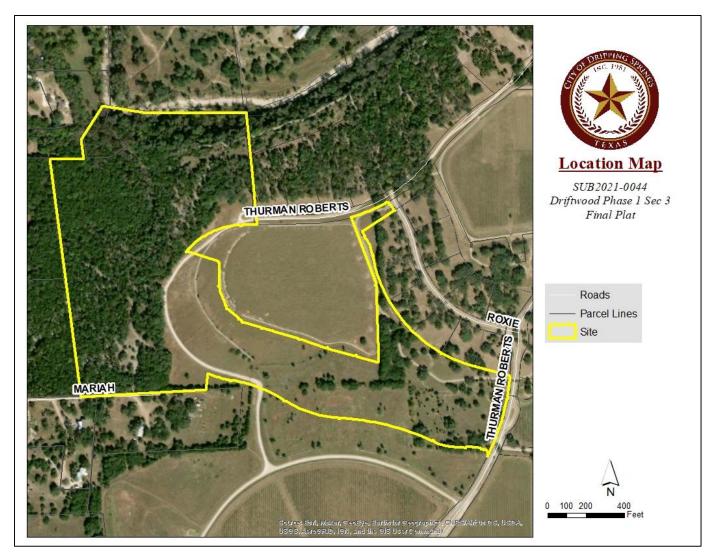
A motion was made by Commissioner Bourguignon to adjourn the meeting. Commissioner Williamson seconded the motion which carried unanimously 5 to 0.

This regular meeting adjourned at 6:53 p.m.



Planning & Zoning Commission Planning Department Staff Report

P&Z Meeting:	September 28, 2021
Project Number:	SUB2021-0044
Project Planner:	Tory Carpenter, Senior Planner
Item Details	
Project Name:	Driftwood Subdivision Phase 1 Section 2
Property Location:	214 Thurman Roberts Way
Legal Description:	42.17 acres out of the Freelove Woody Survey, Abstract 20
Applicant:	Murfee Engineering Company, Inc.
Property Owner:	Driftwood DLC Investors I, LP
Request:	A residential final plat.



Overview

The applicant is requesting approval of a final plat consisting of 20 residential lots. This plat is consistent with the approved preliminary plat and surety has been approved for the completion of the public infrastructure on the site.

Action Requested

Approval with Conditions.

Conditions

1. The applicant shall provide a 1445 approval statement from Hays County for this subdivision plat.

Site Information

Location:

The subject property is located at 214 Thurman Roberts Way, generally located north of FM 1826, east of FM 150, and south of Onion Creek.

Zoning Designation: ETJ

Property History

The preliminary plat was approved March 30, 2021. The surety bond was approved September 21, 2021.

Recommendation

Staff is recommending *approval with conditions*.

Attachments

Exhibit 1 – Plat Exhibit 2 – Proposed Final Plat for the Subdivision

Recommended Action:	Approval with conditions.
Budget/Financial Impact:	All fees have been paid.
Public Comments:	None Received at this time.
Enforcement Issues:	N/A

Item 2.



CITY OF DRIPPING SPRINGS

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SUBDIVISION APPLICATION

Case Number (staff use only): ______

		PLAT TYPE
MEETINGS REQUIRED (AS APPLICABLE PER SUBDIVISION ORDINANCE)		Amending Plat Minor Plat
INFORMAL CONSULTATION DATE:	PRE-APPLICATION CONFERENCE DATE:	☐ Replat ☑ Final Plat
	July 13, 2pm	Plat Vacation Other:

CONTACT INFORMATION

APPLICANT NAME Tory Miller,	PE		
COMPANY Murfee Engineering	g Company, Inc		
STREET ADDRESS 1101 S capit	al of TX Hwy, Building D-110		
CITY Austin	STATE Texas	ZIP CODE	
PHONE 512-327-9204	EMAIL tmiller@murfee.com		

OWNER NAME			
	stors I, LP, c/o Don Bosse, VP of Dev, Driftwood Go	lf Club	
STREET ADDRESS 582 Thurman	n Roberts Way		
CITY Driftwood	STATE Texas	ZIP CODE	
PHONE 737-241-3517	EMAIL dbosse@driftwoodgolfclub.com		

the strategy of the set of the	PROPERTY INFORMATION
PROPERTY OWNER NAME	Driftwood DLC Investors I, LP
PROPERTY ADDRESS	Thurman Roberts Way
CURRENT LEGAL DESCRIPTION	42.17 ac out of Freelove Woody Sur, Abs 20, Hays Co, TX
TAX ID #	R12537, R20553
LOCATED IN	City Limits
	Extraterritorial Jurisdiction
CURRENT LAND ACREAGE	42.17
SCHOOL DISTRICT	Hays Consolidated ISD and Dripping Springs ISD
ESD DISTRICT(S)	ESD 6 and ESD 1
ZONING/PDD/OVERLAY	NA
EXISTING ROAD FRONTAGE	Private Name: Thurman Roberts Way
	State Name:
	City/County (public) Name:
DEVELOPMENT	✓Yes (see attached)
AGREEMENT?	□Not Applicable
(If so, please attach agreement)	Development Agreement Name:

ENVIRONMENTAL INFORMATION	A Provident St.
IS PROPERTY OVER THE EDWARDS AQUIFER RECHARGE ZONE?	
IS PROPERTY OVER THE BARTON SPRINGS CONTRIBUTING ZONE TO THE EDWARDS AQUIFER?	IZYES □NO
IS PROPERTY WITHIN A FEMA FLOODPLAIN AS DEFINED BY THE MOST CURRENT FIRM?	YES []NO

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Driftwood Subdivision, Phase One, Section Three 42.17 26
26
1.165
RESIDENTIAL: 20 COMMERCIAL:
RESIDENTIAL: COMMERCIAL: INDUSTRIAL:
PUBLIC: PRIVATE: 3,114
CONVENTIONAL SEPTIC SYSTEM CLASS I (AEROBIC) PERMITTED SYSTEM
SURFACE WATER
GROUND WATER*
R PROVISION FOR THE DEVELOPMENT USING GROUNDWATER RESOURCES OWATER CONSERVATION DISTRICT MUST BE NOTIFIED:

HAYS-TRINITY GCD NOTIFIED?

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COMMENTS:	
TITLE:	SIGNATURE:

PUBLIC UTILITY CHECKLIST

ELECTRIC PROVIDER NAME (if applicable): Pedernales Electric Cooperative Inc
Charter Business - Spectrum
VERIFICATION LETTER ATTACHED ONOT APPLICABLE
WATER PROVIDER NAME (if applicable): City of Dripping Springs
VERIFICATION LETTER ATTACHED ONOT APPLICABLE
WASTEWATER PROVIDER NAME (if applicable): City of Dripping Springs
VERIFICATION LETTER ATTACHED INOT APPLICABLE
GAS PROVIDER NAME (if applicable): Texas Gas Service
VERIFICATION LETTER ATTACHED ONOT APPLICABLE

PARKLAND DEDICATION?	AGRICULTURE FACILITIES (FINAL PLAT)?
YES INOT APPLICABLE	YES NOT APPLICABLE

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COMPLIANCE WITH OUTDOOR LIGHTING ORDINANCE?*

(See attached agreement)

*If proposed subdivision is in the City Limits, compliance with the Lighting Ordinance is **mandatory**. If proposed subdivision is in the ETJ, compliance is **mandatory** when required by a Development Agreement, or as a condition of an Alternative Standard/Special Exception/Variance/Waiver.

Voluntary compliance is strongly encouraged by those not required by above criteria (see Outdoor Lighting tab on the city's website at <u>www.cityofdrippingsprings.com</u> and online Lighting Ordinance under the Code of Ordinances tab for more information).

YES (REQUIRED) □YES (VOLUNTARY*) □NO

APPLICANT'S SIGNATURE

Note: An additional signature is required on page 7 of the application verifying completeness. Applications should be submitted **only** when all required information is included in the submittal.

The above information is true to the best of my knowledge. I attest that the real property described is owned by me and all others as signed below. If the below signed applicant is not the owner of said property, the signature of the property owner must be included below, or consent must be attached (If a corporation, please list title, and name of corporation.)

ORY MILLER

Applicant Name

MI MS

Applicant Signature

Notary

Notary Stamp Here

SANDRA B SWINNEY Notary Public, State of Texas Comm. Expires 03-23-2024 Notary ID 128931290

Property Owner Name

×

Property Owner Signature

Date

7-9-21

7-9-2021

Date

Date

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All required items and information (including all applicable below listed exhibits and fees) must be received by the City for an application and request to be considered complete. Incomplete submissions will not be deemed filed and complete. By signing below, I acknowledge that I have read through and met all requirements for a complete submittal:

Applicants Signature:

->

+>

MyMBL

_____ Date:__ 7-9-21

FINAL, REPLAT, MINOR, AND AMENDING PLAT CHECKLIST		
		Subdivision Ordinance, Section 5
STAFF	APPLICANT	
		Completed application form - including all required notarized signatures
		Application fee (refer to Fee Schedule)
		Digital Copies/PDF of all submitted items – please provide a coversheet outlining what digital contents are included on the CD (USD 4).
	U U	County Application Submittal – proof of online submission (if applicable)
	I	ESD No. 6 Application (if applicable)
	I	\$240 Fee for ESD No. 6 Application (if applicable)
		Billing Contract Form
		Engineer's Summary Report
	9	Drainage Report – if not included in the Engineer's summary
	OLGITAL	Final Plats (3 copies required – 11 x 17 to scale)
	NA	Copy of Current Configuration of Plat (if applicable)
		Copy of Preliminary Plat (if applicable)
	D NA	Proof of final acceptance of all public infrastructure by the jurisdiction that will own and maintain it; or posting of fiscal for public infrastructure.
		Digital Data (GIS) of Subdivision
		Tax Certificates – verifying that property taxes are current
	F	Copy of Notice Letter to the School District – notifying of preliminary submittal
		Outdoor Lighting Ordinance Compliance Agreement
	/ /	Development Agreement/PDD (If applicable)

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ltem 2.

15

Ø	Cost estimate of public infrastructure improvements (all public infrastructure improvements including water, wastewater, roads, drainage, curbs, sidewalks, etc.) (if applicable).
	*A Final Plat application will not be accepted if staff has not already approved this.
	Documentation showing approval of driveway locations (TxDOT, County)
Ľ	Documentation showing Hays County 911 Addressing approval (If applicable)
D NK	Parkland Dedication fee (if applicable)
	\$25 Public Notice Sign Fee
L pon	Ag Facility Fees - \$35 per residential LUE (if applicable)
	Proof of Utility Service (Water & Wastewater) or permit to serve
P	Preliminary Conference Form signed by City Staff

	FINAL PLAT INFORMATION REQUIREMENTS
	A vicinity, or location, map that shows the location of the proposed Plat within the City (or within its ETJ) and in relationship to existing roadways.
	Boundary lines, abstract/survey lines, corporate and other jurisdictional boundaries, existing or proposed highways and street right-of-way, bearings and distances sufficient to locate the exact area proposed for the subdivision, and all survey monuments including any required concrete monuments (per the City Engineer); the length and bearing of all straight lines, radii, arc lengths, tangent lengths and central angles of all curves shall be indicated along the lines of each lot or Unit (curve and line data may be placed in a table format); accurate reference ties via courses and distances to at least one recognized abstract or survey corner or existing subdivision corner shall be shown.
I	The name, location and recording information of all adjacent subdivisions (or property owners of adjacent unplatted property), including those located on the other sides of roads or creeks, shall be drawn to the same scale and shown in dotted lines adjacent to the tract proposed for subdivision in sufficient detail to show accurately the existing streets, alleys, building setbacks, lot and block numbering, easements, and other features that may influence the layout of development of the proposed subdivision; adjacent unplatted land shall show property lines, the names of owners of record, and the recording information.
	The location, widths and names of all street right-of-way and easements (it shall be the applicant's responsibility to coordinate with appropriate utility

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	entities for placement of necessary utility easements and for location of all streets and median openings on highways or arterial roadways), existing or proposed, within the subdivision limits and adjacent to the subdivision; a list of proposed street names shall be submitted (in the form of a letter or memo along with the application form) for all new street names (street name approval is required at the time the Plat is approved)
	The location of all existing property lines, existing lot and block numbers and date recorded, easements of record (with recording information),
Ø	Proposed arrangement and square footage of lots or Units (including lot and block numbers or Unit numbers).
	All sheets shall have a title block which shows the title or name under which the proposed subdivision is to be recorded; the name, address and phone number of the property owner(s); the name, address and phone number of the licensed engineer or registered professional land surveyor who prepared the plat/plans; the scale of the plat/plans; the date the plat/plan was prepared; and the location of the property according to the abstract or survey records of Hays County, Texas.
NA	Sites, if any, to be reserved or dedicated for parks, schools, playgrounds, other public uses or for private facilities or amenities
	Scale (including a graphic scale), date, north arrow oriented to the top or left side of the sheet, and other pertinent informational data
	All physical features of the property to be subdivided shall be shown, including:
	- The location and size of all watercourses; and
	- 100-year floodplain according to Federal Emergency Management Agency (FEMA) information; and
	- Water Quality Buffer Zones as required by [WQO 22.05.017]
	- Drainage ways and drainage easements. Drainage easements are required for bypass of any offsite flows and for concentrated flows conveyed across lots. Drainage easements shall be large enough to contain the 100-yr storm [Sub. Ord. 12.2.2].
	- U.S. Army Corps of Engineers flowage easement requirements; and
	- All critical environmental features (CEFs) such as karsts, springs, sinkholes, caves, etc., to be located and documentation to be signed and certified by a geologist. All CEF to have a minimum setback of 150'. All designated wetlands

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	to be certified as such by an accredited wetland biologist relying the presence of wetlands plant species. - Drainage area in acres or area draining into subdivisions (to be included in drainage report and construction plans); and
	Existing zoning of the subject property and all adjacent properties if within the city limits.
	 Provide notes identifying the following: Owner responsible for operation and maintenance of stormwater facilities. Owner/operator of water and wastewater utilities. Owner/operator of roadway facilities
	 Certificates and other language shall be included on the plat, pursuant to the following Subsections: A statement signed by the property owner(s) and acknowledged before a Notary Public that the subdivided area is legally owned by the applicant. A statement signed by the property owner(s) and acknowledged before a Notary Public that the subdivided area is legally owned by the applicant. A statement signed by the property owner(s) and acknowledged before a Notary Public that the subdivided area is legally owned by the applicant. An accurate legal, such as by metes and bounds, description by bearings and distances (including necessary curve and line data), accurate to the nearest one hundredth of a foot, for all boundary, block and lot lines, with descriptions correlated to a permanent survey monument. The registered professional land surveyor's certificate, with a place for his or her signature and notarization of his or her signature. A place for plat approval signature of the Chair or Vice Chair, in the Chair's absence) of the Planning and Zoning Commission, a place for the City Secretary to attest such signature, and the approval dates by Planning and Zoning Commission. Appendices to this Chapter contain certificates and languages to be used on the plat to accommodate the above requirements:

NARRATIVE OF COMPLIANCE

A written narrative describing how all portions of the subdivision meets all requirements of this code and other codes, including landscaping, lighting, parkland dedication, site development, water quality protection, and zoning, as may be relevant.

Outdoor Lighting, Article 24.06	In accordance with DA and City of DS regulations.
Parkland Dedication, Article 28.03	In accordance with DA additional parkland dedication is not required.
Landscaping and Tree Preservation, Article 28.06	In accordance with DA.

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Subdivision, 28.02,	This section shall also include, depending on what type of plat is being filed, how public or private improvements will meet City standards, including water quality, drainage, stormwater, and fire (if applicable).
Exhibit A	Improvements in accordance with DA and City and County regulations
Zoning, Article 30.02, Exhibit A	NA

Received on/by.	Rece	ived	on/by:
-----------------	------	------	--------

Date, initials

Item 2.



LIGHTING ORDINANCE COMPLIANCE AGREEMENT

Property Address: Thurman Roberts Way

Commercial

Residential

Applicant's Name (and Business Name, if Applicable):

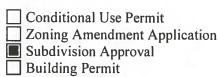
Don Bosse, VP of Development, Driftwood Golf Club

Applicant's Address: 582 Thurman Roberts Way, Driftwood, TX 78619

Applicant's Email: dbosse@driftwoodgolfclub.com

VOLUNTARY COMPLIANCE with mitigation conditions:

MANDATORY COMPLIANCE: IF APPLYING FOR:



Site Development Permit
 Sign Permit
 Alcoholic Beverage Permit
 Food Establishment Permit
 On-Site Sewage Facility Permit

By applying for a **Conditional Use Permit, Zoning Amendment Application, Subdivision Approval, or Building Permit** for a major addition, all existing outdoor lighting shall be brought into conformance with the City of Dripping Spring's Lighting Ordinance (see Ch. 24, Sec 1, 24.06.005 in CODS Code of Ord.) <u>before: final inspection, issuance of a certificate of occupancy, or final plot recordation.</u>

Applicants receiving a permit for: Site Development, Sign Permit for externally or internallyilluminated outdoor sign, initial Alcoholic Beverage Permit, initial Food Establishment Permit, and On-Site Sewage Facility Permit shall have a maximum of 90 days from permit issuance to conform with the City of Dripping Spring's Lighting Ordinance (see Ch. 24, Sec 1, 24.06.005 in CODS Code of Ord.).

-If existing lighting is nonconforming, plans for bringing the lighting into conformance are **required** to be attached to this agreement.

-*If existing lighting is already in conformity* with the lighting ordinance, photos of all on-site lighting are **required** to be attached to this agreement for verification.

By signing below, I acknowledge that I have read and agreed to these terms and conditions and accept responsibility for conforming to the above stated ordinance specifications:

Signature

DRIFTWOOD SUBDIVISION, PHASE ONE, SECTION THREE FINAL PLAT

COUNTY OF HAYS X

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS, THAT DRIFTWOOD DLC INVESTOR I, LP, ACTING BY AND THROUGH J. DAVID RHOADES, AUTHORIZED ACENT OF THAT 65.3766 ACRES RECORDED IN DOCUMENT NO. 20031232 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, DO HEREBY SUBDIVIDE 42.1751 ACRES OF LAND TO BE KNOWN AS "DRIFTWOOD SUBDIVISION, PHASE ONE, SECTION THREE FINAL PLAT", IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOPCRE GRANTED AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE EASEMENTS SHOWN HEREON.

8-30-2021

DATE

J. DAVID RHOADES AUTHORIZED AGENT 582 THURMAN ROBERTS WAY. DRIFTWOOD, TEXAS 78619

X

STATE OF ARIZONA COUNTY OF MARICOPA X

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED J. DAVID RHOADES, KNOWN BY ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPCSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 30 DAY OF August



Breun NOTARY PUBLIC IN AND FOR THE STATE OF ARIZONA

*

TORY DUANE MILLER 135598 CENSE?

THIS IS TO CERTIFY THAT I AM CERTIFIED TO PRACTICE THE PROFESSION OF ENGINEERING IN THE STATE OF TEXAS: THAT I PREPARED THE PLAN SUBMITTED HEREWITH, AND THAT ALL INFORMATION SHOWN THEREON IS ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AS RELATED TO THE ENGINEERING PORTIONS THEREOF AND THAT SAID PLAN COMPLIES WITH ORDINANCE NO. 1230.6 SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN THE CITY OF DRIPPING SPRINGS AND THE SUBDIVISION AND DEVELOPMENT REQULATIONS OF HAYS COUNTY, TEXAS, EXCEPT FOR THOSE VARIANCES GRANTED BY THE COMMISSIONERS COURT.

WITNESS MY HAND THIS THE 30TH DAY OF ALLOUST , 2021.

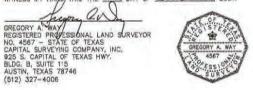


SURVEYOR'S NOTES:

- 1. NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE.
- 2. THE ENTIRETY OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE EDWARDS AQUIFER.
- 3. NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF ANY MUNICIPALITY'S CORPORATE CITY LIMITS, BUT IS WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DRIPPING SPRINGS.
- 4. A PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE 100 YEAR FLOOD PLAIN IN ZONE "AS" AS DELINEATED ON HAYS COUNTY COMMUNITY PANEL MAP #48209C0120F EFFECTIVE DATE SEPTEMBER 2, 2005.

I GREGORY A. WAY, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH THE SURVEY RELATED REQUIREMENTS OF THE CITY OF DRIPPING SPRINGS SUBDIVISION ORDINANCE AND FURTHER CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

WITNESS MY HAND THIS THE LOTE DAY OF JUNE 2021



SUBDIVISION PLAT NOTES:

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

- NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL OR STATE-APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUND WATER AVAILABILITY, RAIN WATER COLLECTION IS ENCOURAGED AND IN SOME AREAS, MAY OFFER THE BEST RENEWABLE WATER RESOURCE.
- NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES.
- 3. NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

MARCUS PACHECO, DIRECTOR HAYS COUNTY DEVELOPMENT SERVICES

ERIC VAN GAASBEEK, R.S., C.F.M. FLOODPLAIN ADMINISTRATOR DATE DATE

UTILITY NOTES:

- 1. WATER AND WASTEWATER SERVICES WILL BE PROVIDED BY THE CITY OF DRIPPING SPRINGS.
- 2. ELECTRIC UTILITY SERVICE WILL BE PROVIDED BY PEDERNALES ELECTRIC COOPERATIVE, INC.

3. TELEPHONE SERVICES WILL BE PROVIDED BY CHARTER SPECTRUM COMMUNICATIONS.

GENERAL NOTES

- 1. THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF DRIPPING SPRINGS EXTRATERRITOR
- URISOLATION IS LOCATED WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND THE THIS SUBDIVISION IS WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND THE DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT. 3. THIS SUBDIVISION IS LOCATED WITHIN THE HAYS TRINIITY GROUNDWATER CONSERVATION DISTRICT.

- THIS SUBDIVISION IS LOCATED WITHIN THE HATS TRINITY OROUNDWATER CONSERVATION DISTRICT.
 NO FENCES SHALL BE PLACED SO AS TO IMPEDE THE FLOW OF DRAINAGE WAY.
 NOTES THE PAGE 451, VOLUME 5183, PAGE 455, VOLUME 5183, PAGE 450, NITHE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY. NOTE: NONE OF THE ABOVE EASEMENTS LIE WITHIN OR IMMEDIATELY ADJACENT TO THE HEREIN DESCRIBED PLAT.
 TOTAL ACREAGE OF DEVELOPMENT: 42.1251
 TOTAL ACREAGE OF DEVELOPMENT: 42.1251
 INTENDED USE OF LOTS: SINGLE FAMILY, OPEN SPACE AND PRIVATE STREET
 TOTAL ACREAGE OF LOTS: 21.2151
 INTENDED USE OF LOTS: GRADET than 10 acres 1
 Larger than 51 less than 10
 DRAVENOR 2 & 5 acres 2. Between 1 & 2 acres 14
 Less than an acre 9
- - NEW R.O.W. = 3.1016 ACRES, THURMAN ROBERTS WAY, (LOT 7, BLOCK "F") A LOCAL PRIVATE STREET (2,700 LINEAR FEET)
 - NEW R.O.W. = 0.5578 ACRES, KLEIN COURT, (LOT B, BLOCK "F"
- NEW R.D.W. = 0.5578 ACRES, KLEIN COURT, (LOT B, BLOCK "F") A LOCAL PRIVATE STREET (460 LINEAR FEET) 7. HOMEOWNERS ASSOCIATION MAINTAINED STREETS: DRIFTWOOD DLC INVESTOR I, LP, BY FILING OF THIS PLAT OF RECORD, AND ALL FUTURE OWNERS OF PROPERTY WITHIN THIS SUBDIVISION, BY PURCHASING SUCH PROPERTY, ACKNOWLEDGE AND AGREE THAT HAYS COUNTY SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR OR ACCEPT MAINTENANCE OF THE ROADS SHOWN ON THIS SUBDIVISION: THURMAN ROBERTS WAY, KLEIN COURT AND ROXIE CROSSING UNTIL AND UNLESS DRIFTWOOD DLC INVESTOR I, LP AND/OR THE DRIFTWOOD PROPERTY ASSOCIATION HAS IMPROVED THE ROADWAYS TO THE THEN CURRENT STANDARDS REQUIRED BY HAYS GOUNTY AND THE ROADS HAVE BEEN ACCEPTED FOR MAINTENANCE BY FORMAL, WRITTEN ACTION OF THE COUNTY COMMISSIONERS COURT AND THE ROADWAY, WITH ALL REQUIRED RIGHT-OF-WAY, HAS BEEN DEDICATED BY THE OWNERS THEREOF, AND ACCEPTEG BY THE COUNTY, AS PUBLIC STREET, DRIFTWOOD DLC INVESTOR I, LP AND ALL FUTURE OWNERS OF THE PROPERTY WITHIN THIS SUBDIVISION SHALL LOOK SOLELY TO THE DRIFTWOOD PROPERTY OWNERS SASOCIATION, INC. FOR FUTURE MAINTENANCE AND REPAIR OF THE ROADS AND STREETS SHOWN IN THIS SUBDIVISION SHALL LOOK SOLELY TO THE DRIFTWOOD PROPERTY OWNERS SHOWN IN THIS SUBDIVISION.

- SUBDIVISION SHALL LOOK SOLELY TO THE DRIFTWOOD PROPERTY OWNERS ASSOCIATION, INC. FOR FUTURE MAINTENANCE AND REPAIR OF THE ROADS AND STREETS SHOWN IN THIS SUBDIVISION.
 8. ALL CULVERTS, WHEN REQUIRED SHALL COMPLY WITH THE CURRENT HAYS COUNTY STANDARD, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 703, SUBCHAPTER 8.03.
 9. WHILE THE WATER AVAILABILITY RULES ARE INTENDED TO PRESERVE AND PROTECT THE WATER RESOLCES OF HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 703, SUBCHAPTER 8.03.
 9. WHILE THE WATER AVAILABILITY RULES ARE INTENDED TO RRESERVE AND PROTECT THE WATER RESOLCES OF HAYS COUNTY DES NOT MAKE ANY WARRANTY EXPRESSED, IMPLIED, OR OTHERWISE THAT SUBDIVISIONS THAT COMPLY WITH THESE RULES WILL BE ABLE TO MEET THE WATER NEEDS OF THOSE PURCHASING LOTS WITHIN THE SUBDIVISION.
 10. ALL RESIDENTIAL LOTS WITHIN THIS SUBDIVISION ARE RESTRICTED FROM DRILLING INDIVIDUAL WATER WELLS.
 11. THIS SUBDIVISION IS SUBJECT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WATER WELLS.
 12. THE SUBDIVISION IS SUBJECT TO THE AMENDED TO OBTAIN BUILDING PERMITS BEFORE CONSTRUCTION CAN BEGIN ON RESIDENTIAL LOTS, AND SITE DEVELOPMENT AGREEMENT SUT DE CORRED IN VOLUME 6150, PAGE 589 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THIS SUBDIVISION IS REQUIRED TO OBTAIN BUILDING PERMITS BEFORE CONSTRUCTION CAN BEGIN ON RECESSART.
 13. THE OWNER WILL ALLOW THE RIGHT-OF-ENTRY TO THE CITY, UTILITY OR PUBLIC SERVICE PROVORES AND DERFORE CONSTRUCTION OF AND SECESSART.
 14. TEMPORARY EASEMENT TO EXPIRE UPON INCORPORATION INTO PLATED PRIVATE DRAINAGE EASEMENT AND RIGHT-OF-WAY OF DUBLIC SERVICE SAND.
 15. THE SUBDIVISION IS SUBJECT TO DECLARATIONS OF COVENANTS. CONDITIONS AND PLACE ONSTRUCTION STOR WATER CONTROL MEASURES SHALL HAVE A MAINTENANCE PLAN. THE OWNER WAILS AND REFERRED TO IN DEGUMENT NO. 15007648 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY. TEXES ON STANDE PLANCE ONS THE OPERATOR RECEDS OF HAYS COUNTY. THE SUBDIVISION IS SUBDIVISION IS S

GENERAL NOTES CONTINUED ON SHEET 4 OF 4.

STATE	OF	T	EXAS	
COLINE	v.n	10	LAND	

XXX CITY OF DRIPPING SPRINGS

THIS FINAL PLAT OF DRIFTWOOD, PHASE ONE, SECTION THREE, HAS BEEN SUBMITTED AND CONSIDERED BY THE CITY OF DRIPPING SPRINGS AS A FINAL PLAT FOR ADMINISTRATIVE APPROVAL PURSUANT TO ORDINANCE 1230.09 AND SUBMITTED TO AND CONSIDERED BY THE CITY OF DRIPPING SPRINGS AND IS HEREBY APPROVED.

APPROVED, THIS THE DAY OF , 2021

BY:

MIM JAMES PLANNING & ZONING COMMISSION CHAIRPERSON

ATTEST:

ELAINE I

ANDREA CUNNINGHAM, CITY SECRETARY

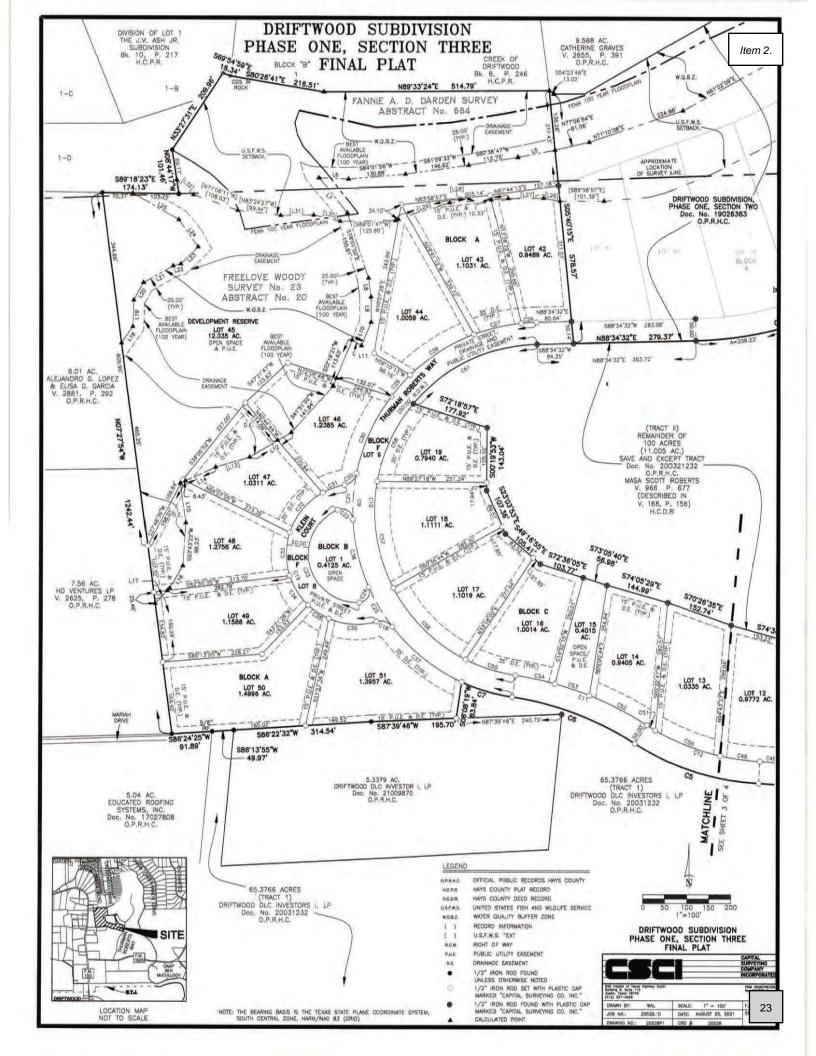
I, THE UNDERSIGNED, DIRECTOR OF THE HAYS COUNTY DEVELOPMENT SERVICES DEPARTMENT, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL HAYS COUNTY REQUIREMENTS AS STATED IN THE INTERLOCAL COOPERATION AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF DRIPPING SPRINGS FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DRIPPING SPRINGS.

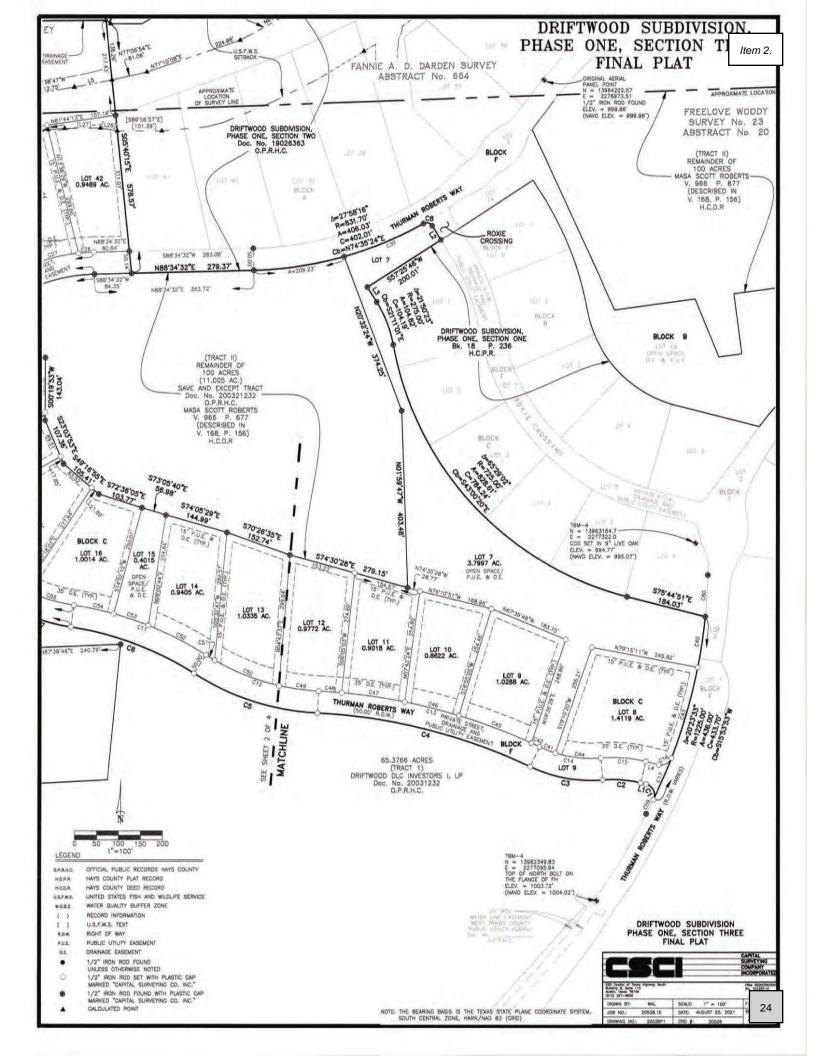
MARCUS PACHECO, DIRECTOR DATE HAYS COUNTY DEVELOPMENT SERVICES STATE OF TEXAS)(COUNTY OF HAYS

I, ELAINE HANSON CARDENAS, CLERK OF HAYS COUNTY, TEXAS, HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WITHING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE ______ DAY OF ______ 2021, AT _____ O'CLOCK ___M. AND DULY RECORDED ON THE _____ DAY OF _____ 2021, AT ____ O'CLOCK ___M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN INSTRUMENT NO. DRIFTWOOD SUBDIVISION

		PHASE ON	OD SUBDIVISION E, SECTION THRE NAL PLAT	E
HANSON CARDENAS CLERK, HAYS COUNTY,	TEXAS	CSC		CAPITAL SURVEYING COMPANY INCORPORATED
		935 Capitor of Tecore Highway South Bulling B. Solta 115 Autor, Taxar 78745 (S12) 827-4006		FIEM RECONFIRMINGN
		DRAWN BY: WAL	SCALE: 1" = 100"	F.D.
		JOB NC.: 20525.10	DATE: AUGUST 25, 2021	
		DRAWING NO. 20528P1	CRD #: 20528	22

Item 2.





DRIFTWOOD SUBDIVISION, PHASE ONE, SECTION THREE FINAL PLAT

Item 2	2.
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CURVE	DELTA	RADIUS	ARC	CHORD	CH. BEARING
C1	102'35'51"	25.00'	44.77'	39.02'	N25'12'16"W
C2	18'10'47"	275.00*	87.26'	86.89'	N85'35'35"W
C3	30'05'42"	325.00'	170.71	168.75'	N79'38'08"W
C4	22'37'47"	1275.00'	503.58'	500.31	N75'54'10"W
C5	29'53'33"	575.00'	299.99'	296.60'	N72'16'17"W
C6	24'10'30"	717.00'	302.53	300.29'	N69'24'45"W
C7	16'00'04"	429.00'	119.81'	119.42'	N73'29'58"W
C8	87'17'31"	15.00'	22.85	20.71'	\$75'44'58"E
C9	170'04'32"	429.00'	1273.43	854.78	N03'32'16"E
010	170'04'32"	379.00	1125.02	755.16'	503'32'16"W
C11.	24'10'30"	767.00*	323.62'	321.22	569'24'45"E
C12	29'53'33"	525.00'	273.91'	270.81'	\$72'16'17"E
C13	22'37'47"	1325,00	\$23.32'	519.93'	\$75'54'10"E
C14	30'05'42"	275.00	144.45'	142.79	\$79'38'08"E
C15	18'10'47"	325,00*	103.12*	102.691	\$85'35'35"E
C16	82'15'17"	25.00	35.89'	32.89'	N62'22'10"E
C17	4'51'08"	1225.00'	103.74*	103.71*	\$23'40'05"W
C18	68'26'18"	34.00'	40.61'	38.24'	N72'19'33"W
C19	186'20'22"	160,00	520.36'	319.51	N1322'31"W
C20	68'25'18"	34.00'	40.61	38.24	N45'34'31"E
C21	14'06'40"	429.00	105.66'	105.39'	504'18'03"W
C22	110'45'32"	25.00'	48.33'	41.15	N56'08'03'W
C23	159'43'22"	110,00'	306.65'	216.56	\$13'22'31"E
C24	110'45'32"	25.00'	48.33	41.15'	N31"23'02"E
C25	14'06'40"	429,00'	105.66	105.39'	\$31'03'04"E
C28	4'41'05"	429.00'	35.08*	35.07	\$66'13'59'W
C27	14'39'17"	429.00	109.73	109,43'	\$76'33'48'W
C28	23'16'34"	429.00'	174.28	173.08	\$57'35'52'W
C29	8'40'59"	429.00'	65.01*	64.95	\$41'37'06"W
C30	25'55'14"	429.00'	194.08	192.43*	\$24'18'59'W
¢31	19'04'47"	160.00*	53.28'	53.03'	\$70'15'17"W
C32	42'47'28"	160.00*	119.50'	116.74'	\$39'19'09"W
C33	35'54'57"	160.00'	100.30'	98.66'	500'02'03"E
C34	28'39'02"	160.00	80.01*	79.18'	\$32'19'02"E
C35	20'03'48"	160.00'	56.03	55.74'	S56'40'28"E
C36	39'50'20"	160.00'	111.25	109.02*	\$86'37'32"E
C37	27'23'32"	429.00	205.10'	203.15'	\$51'48'10"E
C38	21/14'27"	429,00'	159.04'	158.13	\$13'22'31"E
C39	13'33'28"	831.70*	196.80'	195.34'	N67'23'00"E
C40	5'28'19"	1225.00'	116.99*	116.95	508'26'18'W
C41	8'10'44"	275.00'	39.26	39.22	N68'40'39"W
C42	0'53'31"	1325.00	20.63	20.63	N65'02'02"W
C43	10'04'06"	1225.00'	215.26'	216,99'	516'12'28'W
C44	21'54'58"	275.00'	105.19'	104.55'	N83'43'30"W
C45	7'36'55"	1325.00'	176.11	175.98'	N69'17'15"W
C46	5'32'37"	1325.00'	128.20'	128.15	N75'52'01"W
C47	6'17'27"	1325.00'	145.48	145.40'	N81'47'03"W
C48	2'17'17"	1325.00'	52.91'	52.91	N86'04'25"W
C49	9'58'21"	525.00'	91.38'	91.26	N82'13'52'W
C50	17'22'06"	525.00'	159.15	158.54	N66.33,38,M
G51	2'33'06"	525.00'	23.38'	23.38'	N58'36'03'W
C52	11'01'25"	767.00'	147.57	147.34	N62'50'13"W
C53 C54	6'12'40"	767.00*	83.15	83.11'	N71'27'16'W
	6'56'25"	767.00'	92.91	92,85'	N78'01'48'W
C55	17'59'36"	379.00'	119.02	118.53	N72'30'12"W
C56	35'47'40"	379.00	236.77*	232.94'	N45'36'34"W
C57	37'48'32"	379.00'	250.10'	245.58	N08'48'28"W
C58	29'49'14"	379.00'	197.26	195.04'	N25'00'25"E
C59 C60	01'41'53" 04'26'07"	1225.00*	36.30'	36.30'	\$26'56'36"W
		1225.00'	94.83	94 80'	N03'29'30"E

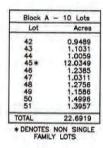
LINE	BEARING	LENGTH		
L1	N76'30'11"W	12.57		
12	\$32'06'12"E 37.95'			
L3	S32'06'12"E 40.24'			
L4	S76'30'12"E 30.51			
1.5	576'23'05"W	86.38		
Lő	N87'44'31"W	65.49		
17	\$38'50'06"E	102.25		
LB	S07'16'24"E	43.40'		
L9	\$00'26'54"E	57.62		
L10	\$21'12'49"W	57.41		
L11	N59'10'13"W	25.36'		
L12	559'24'34"W	110.93'		
L13	573'44'12"W	81.79'		
L14	\$65'23'29'W	88.68'		
L15	\$08'03'55"E 90.			
L16	\$30'14'49'W 58.5			
L17	\$43'17'26"W 47.8			
L18	N36'21'47"E	45.44'		
L19	N01'33'56"E	60.46		
L20	N28'55'13"E 45.1			
L21	N60'09'25"E	76,83		
L22	N75'09'29"E	18.16		
L23	N45'26'10"E	55,27'		
L24	N35'32'03"W	78.59'		
1.25	N59'56'32'W	120.00'		
1.26)	[NB0'22'19"W]	[38.60']		
127]	[S89'24'34'W]	[80.83']		
L28]	[\$78'53'38"W]	[262.14']		
1.29]	[\$89'01'47"W]	[125.85']		
L30]	[N76'38'53'W]	[61.25']		
[131]	[N83'24'27"W]	[99.44']		
L32]	[N71'06'11"W]			

LINE TARLE

GENERAL NOTES CONTINUED:

- THIS PLAT AND SUBSCOUENT SITE DEVELOPMENT PLANS SHALL COMPLY WITH THE MOST CURRENT INTERNATIONAL FIRE CODE AS ADOPTED AND AMENDED BY THE EMERGENCY SERVICE DISTRICT No. 6 OR ITS SUCCESSORS. U.S. FISH AND WILDLIFE SERVICE BUFFER ZONES THE USFWS BUFFER ZONES SHALL REMAIN FREE OF CONSTRUCTION, DEVELOPMENT, OR OTHER ALTERATIONS. THE NUMBER OF ROADWAYS CROSSING THROUGH THE BUFFER ZONES SHOLLD BE MINIMIZED AND CONSTRUCTED ONLT WHEN NECESSARY TO SAFELY ACCESS PROPERTY THAT CANNOT DTHERWISE BE ACCESSED, OTHER ALTERATIONS WITHIN BUFFER ZONES COLLD INCLUDE UTILITY CROSSINGS, BUT ONLY WHEN NECESSARY, FENCES, LOW IMPACT PARKS, AND OPEN SPACE. LOW IMPACT PARK DEVELOPMENT WITHIN THE BUFFER ZONE SHOLLD BE LIMITED TO TRAILS, PICNIC FACILITIES, AND SIMILAR CONSTRUCTION THAT DOES NOT CONSIDERED LOW IMPACT. NEITHER VECESTION, PARKING LOTS AND ROADS ARE NOT CONSIDERED LOW IMPACT. NEITHER GLOF COURSE DEVELOPMENT NOR WASTEWATER EFFLUENT IRRIGATION SHOULD TAKE PLACE INTHE BUFFER ZONE. STORMWARE FROM BEVELOPMENT SHOULD BE DISPERSED INTO OVERLAND FLOW PATTERNS BEFORE REACHING 18. DEVELOPMENT SHOULD BE DISPERSED INTO OVERLAND FLOW PATTERNS BEFORE REACHING THE BUFFER ZONES
- THE BUFFER ZONES. 19. POST-DEVELOPMENT CONDITIONS RUNOFF RATE SHALL BE NO GREATER THAN PRE-DEVELOPED CONDITIONS FOR 2, 5, 10, 25, AND 100 YEAR STORM EVENTS, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 725, SUBCHAPTER 3.02, PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION. 20. MAIL BOXES PLACED WITHIN THE ROW, SHALL BE OF AN APPROVED TXDOT OR FHWA DESIGN, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 72.1, SUBCHAPTER 2.1.
- ALL ROADWAYS SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH APPLICABLE HAYS COUNTY STANDARDS, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 721, SUBCHAPTER 5, EXCEPT WHERE APPROVED BY THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT REACHED BETWEEN THE CITY OF DRIPPING SPRINGS AND M. SCOTT ROBERTS, RECORDED IN VOLUME 5150, PAGE 598 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.
 DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.
 PER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT REACHED BETWEEN THE CITY OF DRIPPING SPRINGS AND M. SCOTT ROBERTS, RECORDED IN VOLUME 5150.
- PER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT REACHED BETWEEN THE CITY OF DRIPPING SPRINGS AND M. SCOTT ROBERTS, RECORDED IN VOLUME 5150, PAGE 598 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, THURMAN ROBERTS WAY IS CLASSIFIED AS A LOCAL PRIVATE STREET.
 NO COMMERCIAL OR RESIDENTIAL CONSTRUCTION ACTIVITY IS PERMITTED ON THE
- FOLLOWING LOTS: ONLY CONSTRUCTION ACTIVITIES AS SPECIFIED IN THE DEVELOPMENT AGREEMENT ARE PERMITTED ON BLOCK A, LOT 45: RESTRICTED USE - OPEN SPACE, D.E., & P.U.E. AND BLOCK C, LOT 7: RESTRICTED USE - OPEN SPACE, D.E., & P.U.E.
- 25. IMPERVIOUS COVER SHALL COMPLY WITH THE DEVELOPMENT AGREEMENT APPROVED FOR
- THIS SUBDIVISION AND SHALL NOT BE ALTERED. 26. DECLARANT AGREES THAT THE LOTS IN THIS PLAT DOCUMENT ARE SUBJECT TO THE USFWS CONSULTATION NUMBER 21450-2008-TA-0163 DATED MAY 12, 2008, WHICH USFWS STATED THE PROJECT WILL LIKELY NOT RESULT IN THE TAKE OF EITHER THE BARTON SPRINGS SALAMANDER OR GOLDEN-CHEEKED WARBLER.
- 27. THIS SUBDIVISION IS WITHIN ESD No. 1 AND ESD No. 6.

T



Lot	Acres
1*	0.460
OTAL	0.4601

Block C	- 13 Lots
Lot	Acres
7 * 8 9 10 11 12 13 14 15 16 17 18	3.7978 1.4119 1.0288 0.8622 0.9018 0.9772 1.0335 0.9405 0.4015 1.0014 1.1019
19	1.1111 0.7941
TOTAL	15.3637

FAMILY LOTS

Private Street, Drainage and Public Utility	Classification	Linear Ft.	Width	Acres
THURMAN ROBERTS WAY (LOT 9, BLOCK "F") KLEIN COURT (LOT 8, BLOCK "F")	LOCAL	2700 480	50.00' 50.00'	3.1016 A
Total Right of Way		3180		3.6594 Ac

BLOCK "A"	9 Single Family Lots	10.6570 A	
BLOCK "A"	1 Open Space Lot, Drainage	10.0070 /	
	and Public Utility Easement	12.0349	AC.
BLOCK "B"	1 Open Space Lot	0.4601 A	C.
BLOCK "C"	11 Single Family Lots	11.1644 A	c.
BLOCK "C"	2 Open Space Lots, Drainage, and Public Utility Easement	4.1993	
Total Single Fan	nily Lots 20	21.8214	Ac
Total Right of V	Nay	3.6594	Ac
Total Acreage a	of Subdivision	42.1751	Ac

	TOTAL AC	IC (AC) ROADS	IC (AC) LOTS*	IC (AC) LOTS W/ RAINWATER CAPTURE CREDIT	TOTAL IC (AC) W/ RAINWATER CAPTURE CREDIT	* 10	DRIFTWO PHASE ON	
PHASE ONE, SECTION ONE	37.07	3.97	4,98	2.49	6.46	17%		
PHASE ONE, SECTION TWO	119.51	2.50	4,98	2,49	4.99	4,2%		
PHASE ONE, SECTION THREE	42.17	3,65	3,21	1.61	5.27	12.6%		
CLUB CORE, PHASE ONE	10.1	0.52	0,89	0.45	0.97	9.6%	Building B, Buile 115 Audio, Taxos 28765	
CLUB CORE, PHASE TWO	5.34	1.17	1,21	0.61	1.78	33.2%	(512) 327-608 DRAWN IFY: WAL	T
TOTAL	217.19	12.61	15.89	7,94	20.55	9.5%	JOB ND. 20528.10	10
*Assumes 7000 SF IC/LOT w/o	Rainwater Cap	ture Credit	t for Real	dentia)			DRAWING NO.: 20528P1	$\pm i$

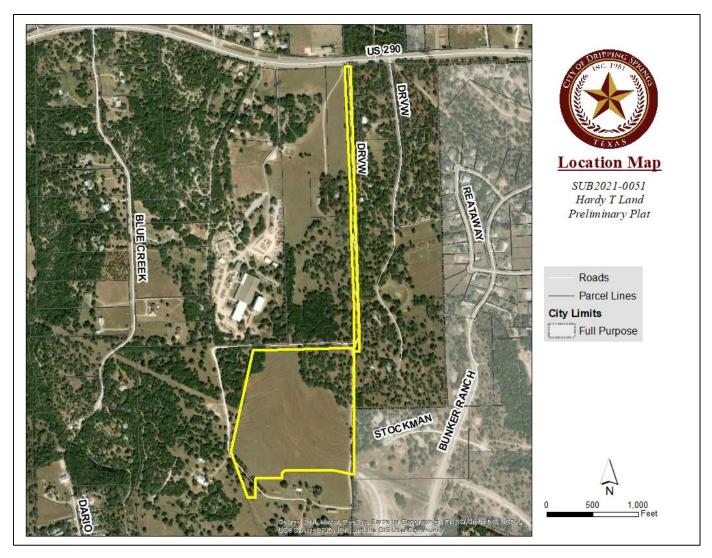
D SUBDIVISION SECTION THREE AL PLAT

CSC		CAPITAL SURVEYING COMPANY INCORPORATED
#25 Could of Texas Highway Sauth Building B, Buile 115 Audin, Texas 78745 (512) 327-4008		ris No.
DRAWN ITY: WAL	SCALE: 1" = 100"	25
JOB NO. 20528.10	DATE: AUQUST 25, 2021	52
DRAWING NO.: 20528P1	CRD #: 20528	4 of 4



Planning & Zoning Commission Planning Department Staff Report

P&Z Meeting:	September 28, 2021
Project Number:	SUB2021-0051
Project Planner:	Tory Carpenter, Senior Planner
Item Details	
Project Name:	Hardy T Land Preliminary Plat
Property Location:	2901 W US 290
Legal Description:	79.61 Acres out of the Benjamin F Hanna Survey
Applicant:	Civil and Environmental Consultants Inc.
Property Owner:	P&H Family Limited Partnership No. 1
Request:	A residential preliminary plat



Overview

The applicant is requesting approval of a preliminary plat consisting of 7 residential lots. The sites will be served by private on-site septic systems and will be accessed via the Bunker Ranch subdivision.

Action Requested

Staff is recommending disapproval of the preliminary plat with the outstanding comments (see attached).

Conditions

1. The applicant shall provide a 1445 approval statement from Hays County for this subdivision plat.

Site Information

Location: 2901 W US 290

Zoning Designation: ETJ

Property History

The applicant requested annexation and zoning to SF-2 for this property in March 2021. The Planning & Zoning recommended denial of the request and the applicant withdrew the request. This applicant has stated that they intend to develop the property in the ETJ without annexation.

Recommendation

Staff is recommending disapproval of the preliminary plat.

Attachments

Exhibit 1 – Plat Exhibit 2 – Proposed Preliminary plat Exhibit 3 – Outstanding Comments Letter

Recommended Action:	Disapproval.
Budget/Financial Impact:	All fees have been paid.
Public Comments:	None Received at this time.
Enforcement Issues:	N/A



City of Dripping Springs

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Open spaces, friendly faces.

Date: September 23, 2021

Permit Number: SUB2021-0051 Project Name: Hardy T Land 1 Preliminary Plat Project Address: 2901 W US 290, Dripping Springs, TX 78620

City staff has completed its review of the above-named project. Reviewer comments are provided below. These comments are intended to be comprehensive; howerver, there may be additional comments after reviewing the submitted corrections. Applicants are encouraged to contact reviewers directly with questions.

Engineer/Public Works Comments

The following comments have been provided by Chad Gilpin. Should you have any questions or require additional information, please contact Chad Gilpin by email cgilpin@cityofdrippingsprings.com.

- 1. Provide documentation demonstrating the Applicant has ownership, use and maintenance rights for the access easement to US290.
- 2. Revise Note 8 on the cover sheet. Dripping Springs Water Supply Corporation will own and operate the water facilities as per note 4.
- 3. Provide 10 ft PUE along the frontage of all lots. [Sub Ord 12.2.4]
- 4. Clarify how water quality requirements will be achieved for stormwater discharges to POA B and POA C. [WQO 22.05]
- 5. Drainage basin OS-1 boundaries are not running perpendicular to existing contours in several locations. Please update.
- 6. Drainage basin PR-DA2 and PR-DA3 boundaries are not running perpendicular to contours. Is there a proposed grading plan or site layout that you can provide to clarify the drainage basin boundaries.
- 7. Provide a sheet showing the existing and proposed roadway layout. Show location, width and names of all streets. [Preliminary Plat Information Requirements].
- 8. Provide a sheet showing the existing water utilities and schematic proposed water utility layout. [Preliminary Plat Information Requirements].
- 9. Provide a construction traffic plan showing [proposed routes for construction vehicle traffic and points of ingress and egress of such vehicles during construction. [Preliminary Plat Information Requirements].
- 10. Per [Sub Ord 4.7] provide an Outline of major wooded areas or the location of major or important individual trees (excluding Cedar Trees) with trunk diameters exceeding twelve inches (12") measured four feet (4') above the ground, and other features pertinent to subdivision; as defined in the City's Technical Construction Standards and Specifications, and the City's Landscape Ordinance.

9/23/2021 11:38:46 AM Hardy T Land 1 Preliminary Plat SUB2021-0051 Page 2

City Planner Comments

The following comments have been provided by Tory Carpenter. Should you have any questions or require additional information, please contact Tory Carpenter by email tcarpenter@cityofdrippingsprings.com.

- 11. Correct the north arrow on the vicinity map and site map (4.7a).
- 12. Provide documentation of street name approval (4.7e)
- 13. As a separate exhibit, illustrate the proposed arrangement and square footage of units (4.7f)
- 14. For the title, distinguish this portion of the hardy tract form the portion being annexed and zoned. E.g. "Hardy Tract North Preliminary Plat." (4.7g)
- 15. Include a representative fraction to the scale bar on pages 2-5. (4.7i)
- 16. Include signature lines for the Planning & Zoning Commission Chair and City Secretary (4.7r)
- 17. To meet block length requirements, the access easement to Hwy 290 must be dedicated as ROW and constructed as a public street. (11.2)
- 18. Remove building setbacks on the cover sheet unless required by Hays County.

All resubmittals must be transmitted to the Planning Department at the City of Dripping Springs or uploaded to www.mygovernmentonline.org**.

Resubmittals must include a cover letter addressing each reviewer comment and noting where associated corrections/revisions/changes can be found in the submittal documents. Please keep previous review comments on the document as you resubmit your response letter, so that staff can keep track of the original comments. Resubmittals that do not include a cover letter will be considered incomplete and returned.

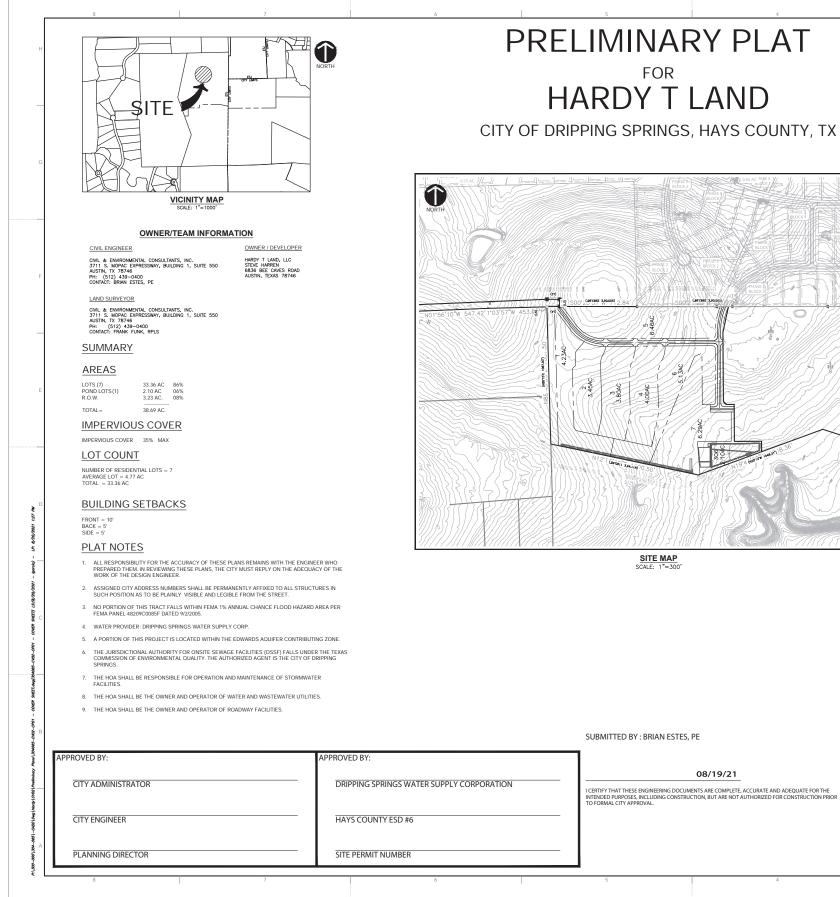
<u>Note regarding plats subject to Planning and Zoning Commission review:</u> Resubmittals of corrected plats and associated plans must be received no later than seven (7) calendar days prior to the scheduled P&Z meeting for final review and inclusion in the P&Z packets [Ch. 28, Ex. A, Sec. 3.8].

<u>Note regarding Site Development Plans</u>: Revisions must be submitted within 60 days of the date of this letter or a new application will be required [Sec. 28.04.011].

Regards,

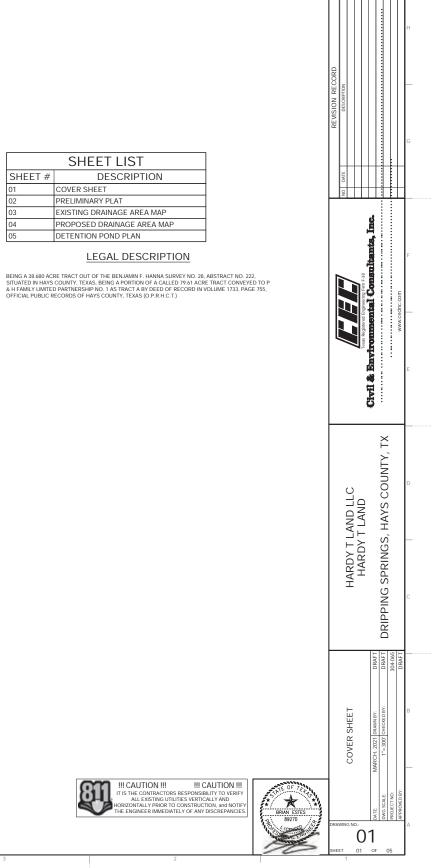
Warlan Rivera,

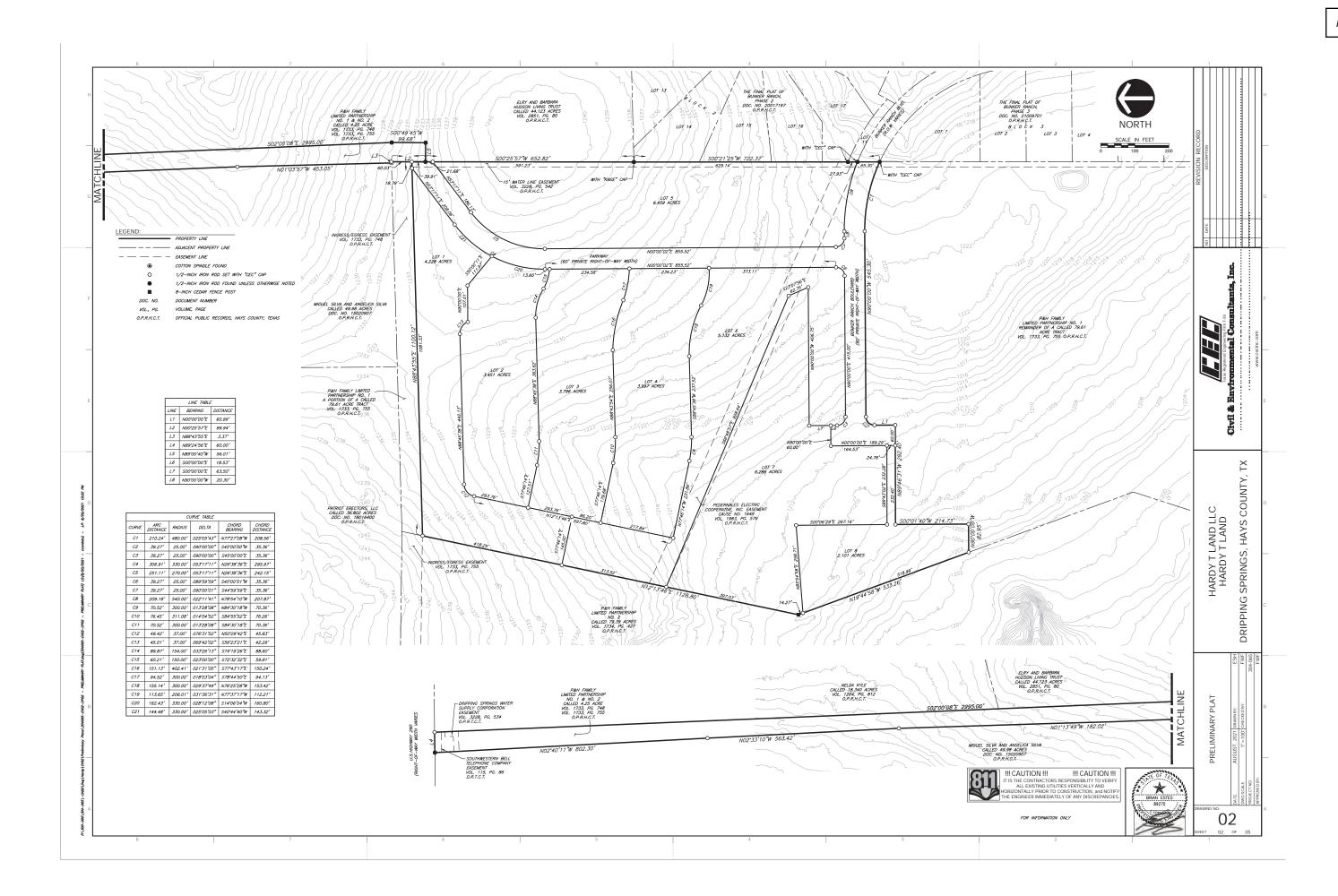
****If you are wanting to resubmit on My Government Online, go to www.mygovernmentonline.org and login using your customer portal account. After login, click the My Account link located at the top right section of the screen to open the My Account Dashboard. Scroll down to the "My Permits" section and locate the project. Click "View Permit" to open the project. Scroll down to the section of your project labeled "Customer Documents." Click the "Add New File" link located to the far right to upload your files. The jurisdiction will be notified automatically after you've uploaded the files. If you are new to the MyGovernmentOnline customer portal, please note that instructions are available on the portal by clicking the "HELP" link or you may call the technical support line at 1-866-957-3764, option 1 for assistance using the online portal.

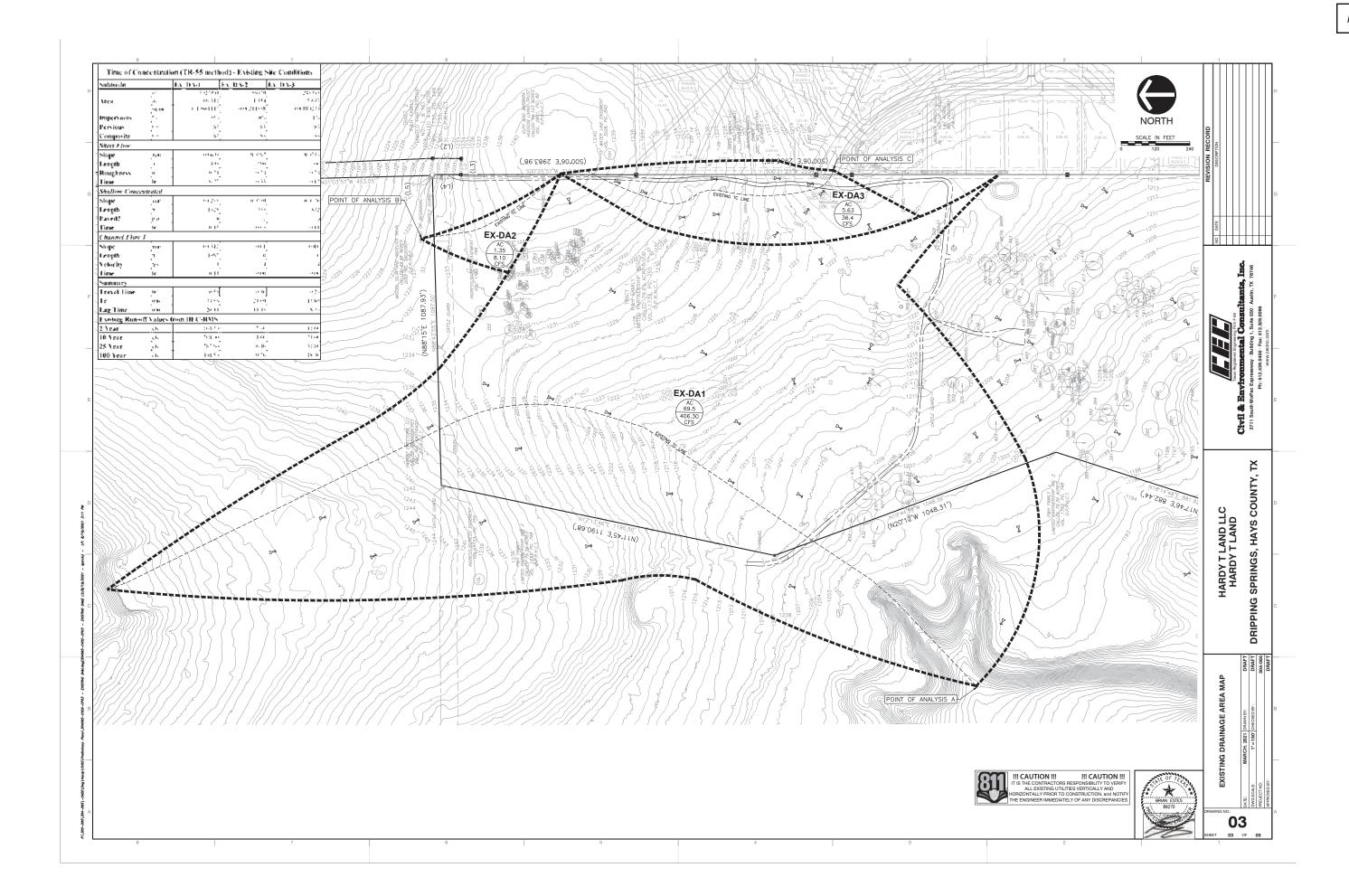


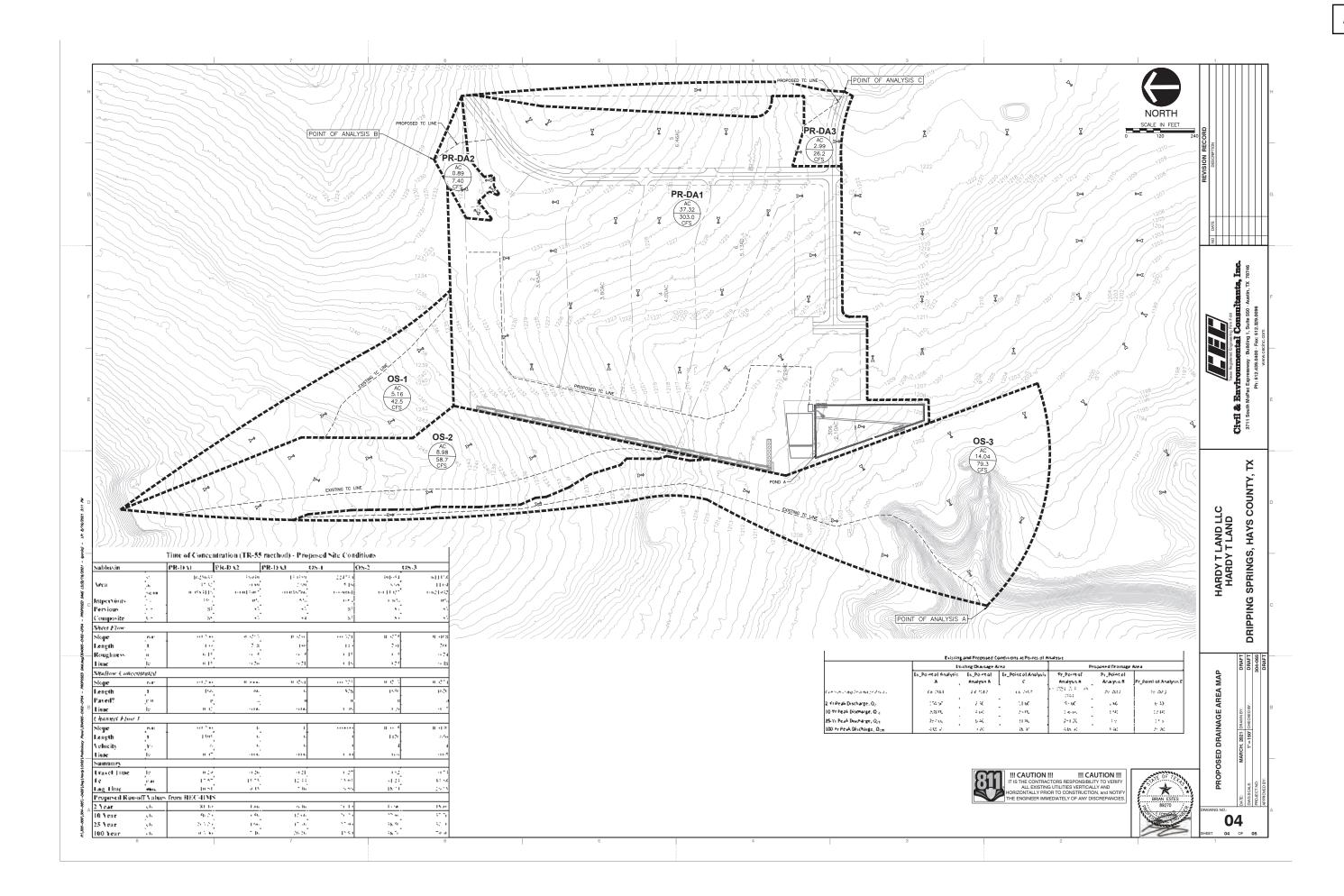
SHEET LIST SHEET # DESCRIPTION COVER SHEET PRELIMINARY PLAT EXISTING DRAINAGE AREA MAP 03 04 PROPOSED DRAINAGE AREA MAP DETENTION POND PLAN

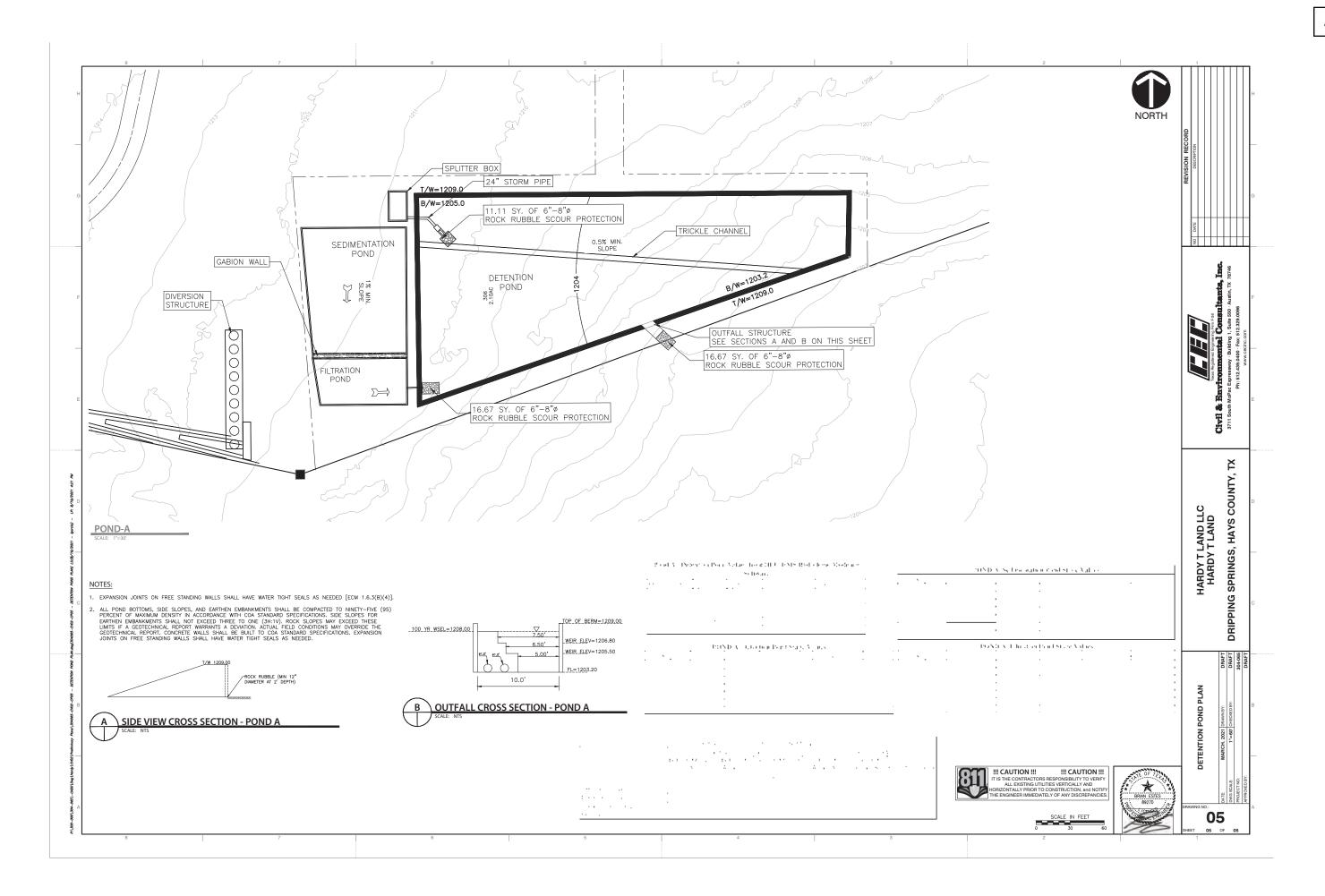
811













CITY OF DRIPPING SPRINGS

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PRELIMINARY PLAT APPLICATION

Case Number (staff use only):	
MEETINGS REQUIRED (AS APPLICABLE PER SUBDIVISION ORDINA	NCE)
INFORMAL CONSULTATION	PRE-APPLICATION CONFERENCE
DATE:	DATE:
□ NOT SCHEDULED	□ NOT SCHEDULED

CONTACT INFORMATION

APPLICANT NAME Brian Estes			
COMPANY Civil and Environme	ental Consultants Inc.		
STREET ADDRESS 3711 S. MoPa	c Expressway, Building 1, Sui	te 550	
CITY_Austin	state Texas	ZIP CODE _	78746
PHONE (512) 439-0400	EMAIL_bestes@cecinc.com		
OWNER NAME P&H Family Lim	ited Partnership No. 1		
OWNER NAME P&H Family Lim			
COMPANYSTREET ADDRESS_ PO Box 1696		ZIP CODE _	78620

	PROPERTY INFOR	MATION
PROPERTY OWNER NAME	P&H Family Limited Pa	artnership No. 1
PROPERTY ADDRESS	2901 W US 290, Dripp	ing Springs, TX 78620
CURRENT LEGAL DESCRIPTION	A0222 Benjamin F Har	nna Survey, Acres 77
TAX ID #	R15103	
LOCATED IN	City Limits	
	Extraterritorial Jurisdic	tion
CURRENT LAND ACREAGE	79.61 AC	
SCHOOL DISTRICT	Dripping Springs ISD	
ESD DISTRICT(S)	Hays County ESD #6	
ZONING/PDD/OVERLAY		
EXISTING ROAD FRONTAGE	⊠ Private	Name: Bunker Ranch Blvd
	□State	Name:
	City/County (public)	Name:
DEVELOPMENT	□Yes (see attached)	
AGREEMENT?	🛛 Not Applicable	
(If so, please attach agreement)	Development Agreemen	t Name:

ENVIRONMENTAL INFORMATION				
IS PROPERTY OVER THE EDWARDS AQUIFER RECHARGE ZONE?	🗌 YES	NO		
IS PROPERTY OVER THE BARTON SPRINGS CONTRIBUTING ZONE TO THE EDWARDS AQUIFER?	🛛 YES	□ NO		
IS PROPERTY WITHIN A FEMA FLOODPLAIN AS DEFINED BY THE MOST CURRENT FIRM?	□ YES	NO		

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PROJECT INFORMATION		
PROPOSED SUBDIVISION	Hardy T Land	
TOTAL ACREAGE OF DEVELOPMENT	38.693 AC	
TOTAL NUMBER OF LOTS	7 LOTS	
AVERAGE SIZE OF LOTS	4.76 AC	
INTENDED USE OF LOTS	⊠ RESIDENTIAL □ COMMERCIAL □ INDUSTRIAL/OTHER:	
# OF LOTS PER USE	RESIDENTIAL: 7 LOTS COMMERCIAL: INDUSTRIAL:	
ACREAGE PER USE	RESIDENTIAL: COMMERCIAL:39.341 AC INDUSTRIAL:	
LINEAR FEET (ADDED) OF PROPOSED ROADS	PUBLIC: PRIVATE: 2,440 LF	
ANTICIPATED WASTEWATER SYSTEM	CONVENTIONAL SEPTIC SYSTEM CLASS I (AEROBIC) PERMITTED SYSTEM PUBLIC SEWER	
WATER SOURCES	SURFACE WATER	
WATER SOORCES	■ PUBLIC WATER SUPPLY	
	🗆 RAIN WATER	
	GROUND WATER*	
-		
*IF DOING GROUND WATER PROVISION FOR THE DEVELOPMENT USING GROUNDWATER RESOURCES, THE HAYS-TRINITY GROUNDWATER CONSERVATION DISTRICT MUST BE NOTIFIED: HAYS-TRINITY GCD NOTIFIED?		

COMMENTS:		
TITLE:	_SIGNATURE:	

PUBLIC UTILITY CHECKLIST

ELECTRIC PROVIDER NAME (if applicable): Pedernales Electric Cooperative (PEC)
COMMUNICATIONS PROVIDER NAME (if applicable):
□ VERIFICATION LETTER ATTACHED □ NOT APPLICABLE
WATER PROVIDER NAME (if applicable): Dripping Springs Water Supply Corp. (DSWSC)
WASTEWATER PROVIDER NAME (if applicable):
□ VERIFICATION LETTER ATTACHED □ NOT APPLICABLE
GAS PROVIDER NAME (if applicable): Texas Gas Service (TGS)

PARKLAND DEDICATION?	AGRICULTURE FACILITIES (FINAL PLAT)?
Fee in lieu 🛛 YES 🗌 NOT APPLICABLE	□ YES 🛛 NOT APPLICABLE
Deallers I. Isternite effective I. Second	

Parkland determination and property appraisal attached

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Item 3.

COMPLIANCE WITH OUTDOOR LIGHTING ORDINANCE?*

(See attached agreement)

*If proposed subdivision is in the City Limits, compliance with the Lighting Ordinance is **mandatory**. If proposed subdivision is in the ETJ, compliance is **mandatory** when required by a Development Agreement, or as a condition of an Alternative Standard/Special Exception/Variance/Waiver.

Voluntary compliance is strongly encouraged by those not required by above criteria (see Outdoor Lighting tab on the city's website at <u>www.cityofdrippingsprings.com</u> and online Lighting Ordinance under the Code of Ordinances tab for more information).

⊠ YES (REQUIRED) □ YES (VOLUNTARY*) □ NO

APPLICANT'S SIGNATURE

Note: An additional signature is required on page 7 of the application verifying completeness. Applications should be submitted **only** when all required information is included in the submittal.

The above information is true to the best of my knowledge. I attest that the real property described is owned by me and all others as signed below. If the below signed applicant is not the owner of said property, the signature of the property owner must be included below, or consent must be attached (If a corporation, please list title, and name of corporation.)

Brian Estes

Applicant Name

Applicant Signature Notar Notary Stamp Here THERESA M HAGOOD Notary ID #130023142 My Commission Expires

B-17-ZI

Date

Date

TARDY E THOMPSON THE

Property Owner Name

, Thos Varah

Property Omner Signature

8-17-2021 Date

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November 12, 2022

All required items and information (including all applicable below listed exhibits and fees) must be received by the City for an application and request to be considered complete. Incomplete submissions will not be deemed filed and complete. By signing below, I acknowledge that I have read through and met all requirements for a complete submittal:

Applicants Signature:

6-29-2 Date:

For projects within the ETJ, per the City of Dripping Springs Interlocal Cooperation Agreement with Hays County, a county subdivision application must also be submitted for review to the City. Fees for Hays County shall also be paid. The City will forward the application and Hays County Fees to the County.

PRELIMINARY PLAT CHECKLIST

	Subdivision Ordinance, Section 4			
	STAFF	APPLICANT		
1		X	Completed application form – including all required notarized signatures	
			Application fee (refer to Fee Schedule)	
0		Ø	Digital Copies/PDF of all submitted items – please provide a coversheet outlining what digital contents are included on the CD/USB drive.	
21		X	Digital Data (GIS) of Subdivision	
		⊠t/A	County Application Submittal – proof of online submission (if applicable)	
2		凶	ESD No. 6 Application (if applicable)	
		X	\$240 Fee for ESD No. 6 Application (if applicable)	
3		X	Billing Contract Form	
4		\square	Engineer's Summary Report	
4		X.	Preliminary Drainage Study	
5		凶	Preliminary Plats (1 Copy required – 11 x 17)	
6		X	Tax Certificates – verifying that property taxes are current	
7		X	Copy of Notice Letter to the School District – notifying of preliminary submittal	
8		X	Outdoor Lighting Ordinance Compliance Agreement	
		NZA	Development Agreement/PDD (If applicable)	
9-11			Utility Service Provider "Will Serve" Letters	
		Nt#A	Documentation showing approval of driveway locations (TxDOT, County,)	
12			Documentation showing Hays County 911 addressing approval (if applicable)	

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See City's parkland determination

Г		See City's parking determinant
13-14	X	Parkland Dedication Submittal (narrative, fees)
-	X	\$25 Public Notice Sign Fee
15-16	X	ITE Trip Generation Report, or if required; a Traffic Impact Analysis
17	X	Geologic Assessment Identifying Critical Environmental Features [Sub. Ord. 4.8(I)(4)]
18	X	OSSF Facility Planning Report or approved OSSF permit (<i>if applicable</i>)
	NIZA	Hays Trinity Groundwater Conservation District approval of water well (<i>if applicable</i>)
19	X	Preliminary Conference Form signed by City Staff
	<u>P</u> F	RELIMINARY PLAT INFORMATION REQUIREMENTS
_	X	A vicinity, or location, map that shows the location of the proposed Preliminary Plat within the City (or within its ETJ) and in relationship to existing roadways.
	X	Boundary lines, abstract/survey lines, corporate and other jurisdictional boundaries, existing or proposed highways and streets (including right-of-way widths), bearings and distances sufficient to locate the exact area proposed for the subdivision, and all survey monuments including any required concrete monuments (per the City Engineer); the length and bearing of all straight lines, radii, arc lengths, tangent lengths and central angles of all curves shall be indicated along the lines of each lot or Unit (curve and line data may be placed in a table format); accurate reference ties via courses and distances to at least one recognized abstract or survey corner or existing subdivision corner shall be shown.
	X	The name, location and recording information of all adjacent subdivisions (or property owners of adjacent unplatted property), including those located on the other sides of roads or creeks, shall be drawn to the same scale and shown in dotted lines adjacent to the tract proposed for subdivision in sufficient detail to show accurately the existing streets, alleys, building setbacks, lot and block numbering, easements, and other features that may influence the layout of development of the proposed subdivision; adjacent unplatted land shall show property lines, the names of owners of record, and the recording information.
	X	The location, widths and names of all streets, alleys and easements (it shall be the applicant's responsibility to coordinate with appropriate utility entities for placement of necessary utility easements and for location of all streets and median openings on highways or arterial roadways), existing or proposed, within the subdivision limits and adjacent to the subdivision; a list of proposed street names shall be submitted (in the form of a letter or memo along with the application form) for all new street names (street name approval is required at the time the Preliminary Plat is approved)

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	The location of all existing property lines, existing lot and block numbers and date recorded, easements of record (with recording information), buildings, existing sewer or water mains (can be shown on a separate sheet, if preferred), gas mains or other underground structures, or other existing features within the area proposed for subdivision;
X	Proposed arrangement and square footage of lots or Units (including lot and block numbers or Unit numbers) proposed use of same; for nonresidential uses, the location and size of buildings, existing and proposed. This information shall be provided on a separate sheet, such as on a concept plan or the final site plan.
	All sheets shall have a title block which shows the title or name under which the proposed subdivision is to be recorded; the name, address and phone number of the property owner(s); the name, address and phone number of the licensed engineer or registered professional land surveyor who prepared the plat/plans; the scale of the plat/plans; the date the plat/plan was prepared; and the location of the property according to the abstract or survey records of Hays County, Texas.
X	Sites, if any, to be reserved or dedicated for parks, schools, playgrounds, other public uses or for private facilities or amenities
X	Scale (including a graphic scale), date, north arrow oriented to the top or left side of the sheet, and other pertinent informational data
X	Contours with intervals of two feet (2') or less shown for the area, with all elevations on the contour map referenced to sea level datum; and the limits of any portion of the 100-year floodplain (pursuant to the flood study, if required by the City Engineer) that may be within or adjacent to (i.e., within 100 feet of) the property (final monumentation of the floodplain shall occur, and shall be shown, on the final plat prior to approval and filing at the County) - if no floodplain is present, then a note stating this shall be shown on the plat
X	Areas contributing drainage to the proposed subdivision shall be shown in the drainage study and construction plans; locations proposed for drainage discharge from the site shall be shown by directional arrows.
X	 All physical features of the property to be subdivided shall be shown, including: The location and size of all watercourses; and 100-year floodplain according to Federal Emergency Management Agency (FEMA) information; and

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		- Water Quality Buffer Zones as required by [WQO 22.05.017]
		- Drainage ways and drainage easements. Drainage easements are required for bypass of any offsite flows and for concentrated flows conveyed across lots. Drainage easements shall be large enough to contain the 100-yr storm [Sub. Ord. 12.2.2].
		- U.S. Army Corps of Engineers flowage easement requirements; and
		- All critical environmental features (CEFs) such as karsts, springs, sinkholes, caves, etc., to be located and documentation to be signed and certified by a geologist. All CEF to have a minimum setback of 150'. All designated wetlands to be certified as such by an accredited wetland biologist relying the presence of wetlands plant species. Applicant to include a slope map identifying the breakdown of all lands in categories from 0% to 15 slope, 15 to 30 slope, and over 30% slope; and
		- Ravines; and
		- Bridges; and
		- Culverts; and
		- Existing structures; and
		- Drainage area in acres or area draining into subdivisions (to be included in drainage study and construction plans); and
		- Outline of major wooded areas or the location of major or important individual trees (excluding Cedar Trees) with trunk diameters exceeding twelve inches (12") measured four feet (4') above the ground, and other features pertinent to subdivision; is defined in the City's Technical Construction Standards and Specifications, and the City's Landscape Ordinance.
		 Provide notes identifying the following: Owner responsible for operation and maintenance of stormwater facilities.
		 Owner/operator of water and wastewater utilities.
		Owner/operator of roadway facilities
	X	Schematic Engineering plans of water and sewer lines and other infrastructure (including sizes) to be constructed in the subdivision; the proposed connections to distribution mains shall be indicated

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	Proposed phasing of the development: Where a subdivision is proposed to occur in phases, the applicant, in conjunction with submission of the Preliminary Plat, shall provide a schedule of development, the dedication of rights-of-way for streets and street improvements, whether on-site or off-site, intended to serve each proposed phase of the subdivision. The City Engineer shall determine whether the proposed streets and street improvements are adequate pursuant to standards herein established, and may require that a traffic impact analysis be submitted for the entire project or for such phases as the City Engineer determines to be necessary to adjudge whether the subdivision will be served by adequate streets and thoroughfares.
X	All Preliminary Plats shall be submitted in a legible format that complies with Hays County requirements for the filing of plats.
ا <u>ک</u> ا	Existing zoning of the subject property and all adjacent properties if within the city limits.
X	Construction Traffic Plan showing proposed routes for construction vehicle traffic and points of ingress and egress of such vehicles during construction; temporary construction easement approvals if needed, this shall be sealed by a registered engineer
	 Certificates and other language shall be included on the plat, pursuant to the following Subsections: A statement signed by the property owner(s) and acknowledged before a Notary Public that the subdivided area is legally owned by the applicant. A statement signed by the property owner(s) and acknowledged before a Notary Public that the subdivided area is legally owned by the applicant. An accurate legal, such as by metes and bounds, description by bearings and distances (including necessary curve and line data), accurate to the nearest one hundredth of a foot, for all boundary, block and lot lines, with descriptions correlated to a permanent survey monument. The registered professional land surveyor's certificate, with a place for his or her signature and notarization of his or her signature. A place for plat approval signature of the Chair or Vice Chair, in the Chair's absence) of the Planning and Zoning Commission, a place for the City Secretary to attest such signature, and the approval dates by Planning and Zoning Commission. Appendices to this Chapter contain certificates and languages to be used on the plat to accommodate the above requirements:
Nt/A	If any amount of surface water is to be used by the subject property, the Applicant must provide documentation to the City establishing that the Applicant has notified the following entities of the Applicant's plans for the

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project: Lower Colorado River Authority (LCRA), and the United States Fish and
Wildlife Service (USFWS).

NARRATIVE OF COMPLIANCE		
A written narrative describing how all portions of the subdivision meets all requirements of this code and other codes, including landscaping, lighting, parkland dedication, site development, water quality protection, and zoning, as may be relevant.		
Outdoor Lighting, Article 24.06	Outdoor Lighting Ordinance Compliance Form has been provided in this submittal.	
Parkland Dedication, Article 28.03	See Parkland dedication fee in lieu approval letter attached and appraisal report included.	
Landscaping and Tree Preservation, Article 28.06	Existing are being preserved.	

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Subdivision, 28.02, Exhibit A	 This section shall also include, depending on what type of plat is being filed, how public or private improvements will meet City standards, including water quality, drainage, stormwater, and fire (if applicable). Water quality and detention ponds have been provided on their own lot.
Zoning, Article 30.02, Exhibit A	The Preliminary Plat is in the City of Dripping Springs ETJ.

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Project Number: _____-Only filled out by staff

Date, initials



BILLING CONTACT FORM

Project Name: Hardy T Land					
Project Address: 2901 W US 290, Dripping	J Springs, TX 78620				
Project Applicant Name: Brian Estes					
Billing Contact Information					
Name: Steve Harren					
Mailing Address: 317 Grace Lane #24	40				
Austin, Texas 7874	6				
Email: steveharren@aol.com	Phone Number: (512) 644-6800				
Type of Project/Application (check all that apply):					
☐ Alternative Standard	Special Exception				
Certificate of Appropriateness	Street Closure Permit				
Conditional Use Permit	☑ Subdivision				
Development Agreement	□ Waiver				
□ Exterior Design	□ Wastewater Service				
□ Landscape Plan □ Variance					
Lighting Plan	Zoning				

Other

Applicants are required to pay all associated costs associated with a project's application for a permit, plan, certificate, special exception, waiver, variance, alternative standard, or agreement, regardless of City approval. Associated costs may include, but are not limited to, public notices and outside professional services provided to the City by engineers, attorneys, surveyors, inspectors, landscape consultants, lighting consultants, architects, historic preservation consultants, and others, as required. Associated costs will be billed at cost plus 20% to cover the City's additional administrative costs. Please see the online Master Fee Schedule for more details. By signing below, I am acknowledging that the above listed party is financially accountable for the payment and responsibility of these fees.

Signature of Applicant

Site Development Permit



City Council Planning Department Staff Report

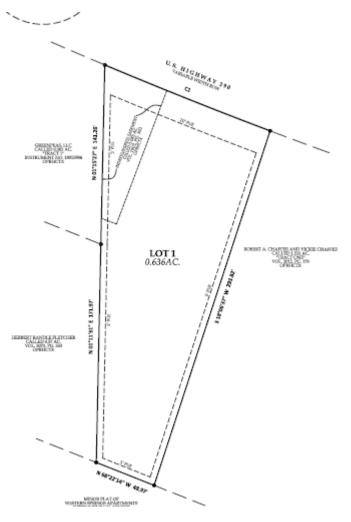
Planning & Zoning Commission Meeting:	September 28, 2021
Project No:	VAR2021-0012
Project Planner:	Tory Carpenter, Senior Planner
Item Details	
Project Name:	709 Business Park Plat
Property Location:	709 Business Park
Legal Description:	0.64 acres out of the P.A. Smith Survey
Applicant:	Randy Hutto
Property Owner:	709 Holdings LLC
Request:	Subdivision Variance request to vary from Section 14.7, minimum lot or unit size.



Overview

This property is located on Hwy 290 and is within a Commercial Services zoning district. Surrounding uses include various commercial businesses and a multifamily development. The property is developed and consists of an office building and small warehouse. The entire site is currently served by a private septic system. The applicant has stated that they do not intend to redevelop the site but are only interested in creating a legal platted lot.

Per Section 14.7 of the City's Subdivision Ordinance, a property is required to have a minimum of .75 acres to be eligible to be served by a private septic wastewater system.



Summary

Section 1.7 requires that the Commission shall consider the following factors:

Factors	Staff Comments
Granting the variance will not be detrimental to the	Granting these variances will not be detrimental to
public safety, health or welfare, and will not be injurious	the public safety, health, or welfare, and will not be
to other property or to the owners of other property, and	injurious to other property or to the owners of other
the waiver will not prevent the orderly subdivision of	property. It will also not prevent orderly subdivision
other property in the vicinity	of other property in the vicinity.
The conditions upon which the request for a variance is	The requests are unique and not applicable to
based are unique to the property for which the variance is	another other property in the vicinity.
sought, and are not applicable generally to other property;	

and	
Because of the particular physical surroundings, shape	This property is 0.114 acres smaller than the
and/or topographical conditions of the specific property	required lot. Furthermore, the site is already served
involved, a particular hardship to the property owner would	by a private septic system and this request is
result, as distinguished from a mere inconvenience, if the	necessary to create a legal lot.
strict letter of these regulations is carried out; and	
The variance will not in any manner vary the provisions of	The property owner is still required to follow all
the Zoning Ordinance, Planned Development District	zoning requirements for the site if it is redeveloped.
Ordinance, or Comprehensive Plan, or any other adopted	
plan(s) or ordinance(s) of the City; and	
An alternate design will generally achieve the same result	There is not an alternative plan for this site because
or intent as the standards and regulations prescribed herein;	the property is already developed.
and	
The waiver variance will enable the applicant to preserve	N/A
more native trees, provide more open space, or ensure more	
wildlife preservation than would be possible complying	
with the strict mandates of this Chapter.	
l	1

Public Notification

This request was included on the posted agenda for the September 28 Planning and Zoning commission meeting.

Meetings Schedule

September 28, 2021 – Planning and Zoning Commission

Attachments

Exhibit 1: Variance Application for lot Size Exhibit 2: Preliminary Plat

Recommended Action:	 Staff is recommending approval of the requested with the following condition; 1. This variance only applies to the property in its current configuration and will cease to be valid if the parcel is further divided by sale or other means as this will require replatting and connection to a public wastewater system.
Alternatives/Options:	Denial of the variance applications.
Budget/Financial Impact:	None calculated at this time.
Public Comments:	No public comment was received for this request.
Enforcement Issues:	N/A



Item 4.



CITY OF DRIPPING SPRINGS

PHYSICAL: 511 Mercer Street • MAILING: PO Box 384

Dripping Springs, TX 78620

• 512.858.4725 • www.cityofdrippingsprings.com

ALTERNATIVE STANDARD/SPECIAL EXCEPTION/VARIANCE/WAIVER APPLICATION

Case Number (staff use only): ______-

CONTACT INFORMATION

PROPERTY OWNER NAME 709 Holdings, LLC

STREET ADDRESS 711 W US 290

CITY Dripping Springs STATE Texas ZIP CODE 78620

PHONE (512) 894-0288 EMAIL rhutto@randyhutto.com

APPLICANT NAME JON Thompson

COMPANY J Thompson Professional Consulting, LLC

STREET ADDRESS PO Box 172

CITY Dripping Springs STATE Texas ZIP CODE 78620

PHONE (512) 568-2184 EMAIL thompsonconsultingds@gmail.com

APPLICATION TYPE	
ALTERNATIVE STANDARD	
SPECIAL EXCEPTION	

		ltem 4.
	PROPERTY INFORMATION	
PROJECT NAME	709 Business Park Subdivision	
PROPERTY ADDRESS	711 W Hwy 290, Dripping Springs, Texas 78620	
CURRENT LEGAL DESCRIPTION	P.A. Smith Survey, Abs 415, 0.64 acre	
TAX ID#	R18079	
LOCATED IN		

Description of request & reference to section of the Code of Ordinances applicable to request:

Section 14.7 of the Subdivision Ordinance requires minimum lot size of 0.75 acre with public water supply and private septic. This tract is 0.64 acre with public water and private septic; however, it has been in existence in its present configuration for over 30+ years. It is not previously platted. The platting of the lot as one fee simple lot requires a variance to the minimum lot size.

• Description of the hardship or reasons the Alternative Standard/Special Exception/Variance / Waiver is being requested:

The hardship is due to the nature of the requirement adopted by the City in the Subdivision Ordinance that recognizes that newly created lots should meet a certain minimum threshold for lot size. However, taking into account that there are older, existing tracts of land that do not meet that minimum threshold and yet have the prerequisites of public water and private septic require a variance from this standard to allow the site to be platted.

• Description of how the project exceeds Code requirements in order to mitigate or offset the effects of the proposed alternative standard/special exception/variance/waiver:

There is not a way for the project to exceed code requirements since all requirements for development apply. They presently do not have any plans to develop further; though they do intend to connect to public wastewater at the earliest possible opportunity which would then make the applicable minimum lot size per zoning (CS) 8,000 square feet at which time they would exceed the minimum lot size by a factor of three.

All required items and information (including all applicable above listed exhibits and fees) must be received by the City for an application and request to be considered complete. **Incomplete submissions will not be accepted.** By signing below, I acknowledge that I have read through and met the above requirements for a complete submittal:

Applicant Signature

Date

CHECKLIST					
STAFF	APPLICANT				
		Completed Application Form - including all required signatures and notarized			
	\checkmark	Application Fee (refer to Fee Schedule)			
	V	PDF/Digital Copies of all submitted documents When submitting digital files, a cover sheet must be included outlining what digital contents are included.			
	\checkmark	Billing Contact Form			
	\checkmark	Photographs			
	\checkmark	Map/Site Plan/Plat			
		Architectural Elevations (if applicable)			
	\checkmark	Description and reason for request (attach extra sheets if necessary)			
	\checkmark	Public Notice Sign - \$25			
		Proof of Property Ownership-Tax Certificate or Deed			
		Outdoor Lighting Ordinance Compliance Agreement - signed with attached photos/drawings (required if marked "Yes (Required)" on above Lighting Ordinance Section of application)			

APPLICANT'S SIGNATURE

The undersigned, hereby confirms that he/she/it is the owner of the above described real property and further, that <u>Jon Thompson</u> is authorized to act as my agent and representative with respect to this Application and the City's zoning amendment process.

Name
<u> </u>
STATE OF TEXAS §
§ COUNTY OF HAYS §
This instrument was acknowledged before me on the day of May -201 by ARAMA HUHO AGON by May RAMA HUHO Notary Public, State of Texas
My Commission Expires: March S, 2025 Randu, HUHO
Name of Applicant

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Date, initials



LIGHTING ORDINANCE COMPLIANCE AGREEMENT

Property Address: 711 W Hwy 290

Commercial Residential Applicant's Name (and Business Name, if Applicable): Randy Hutto, 709 Holdings, LLC Applicant's Address: 4570 Bell Springs Road, Dripping Springs, Texas 78620 Applicant's Email: rhutto@randyhutto.com **WOLUNTARY COMPLIANCE** with mitigation conditions: MANDATORY COMPLIANCE: **IF APPLYING FOR:** Site Development Permit Conditional Use Permit Sign Permit Zoning Amendment Application Alcoholic Beverage Permit Subdivision Approval Food Establishment Permit **Building Permit On-Site Sewage Facility Permit** By applying for a Conditional Use Permit, Zoning Amendment Application, Subdivision Approval, or Building Permit for a major addition, all existing outdoor lighting shall be brought into conformance with the City of Dripping Spring's Lighting Ordinance (see Ch. 24, Sec 1, 24.06.005 in CODS Code of Ord.) before: final inspection, issuance of a certificate of occupancy, or final plot recordation. Applicants receiving a permit for: Site Development, Sign Permit for externally or internallyilluminated outdoor sign, initial Alcoholic Beverage Permit, initial Food Establishment Permit, and On-Site Sewage Facility Permit shall have a maximum of 90 days from permit issuance to conform with the City of Dripping Spring's Lighting Ordinance (see Ch. 24, Sec 1, 24.06.005 in CODS Code of Ord.). -If existing lighting is nonconforming, plans for bringing the lighting into conformance are required to be attached to this agreement.

-If existing lighting is already in conformity with the lighting ordinance, photos of all on-site lighting are required to be attached to this agreement for verification.

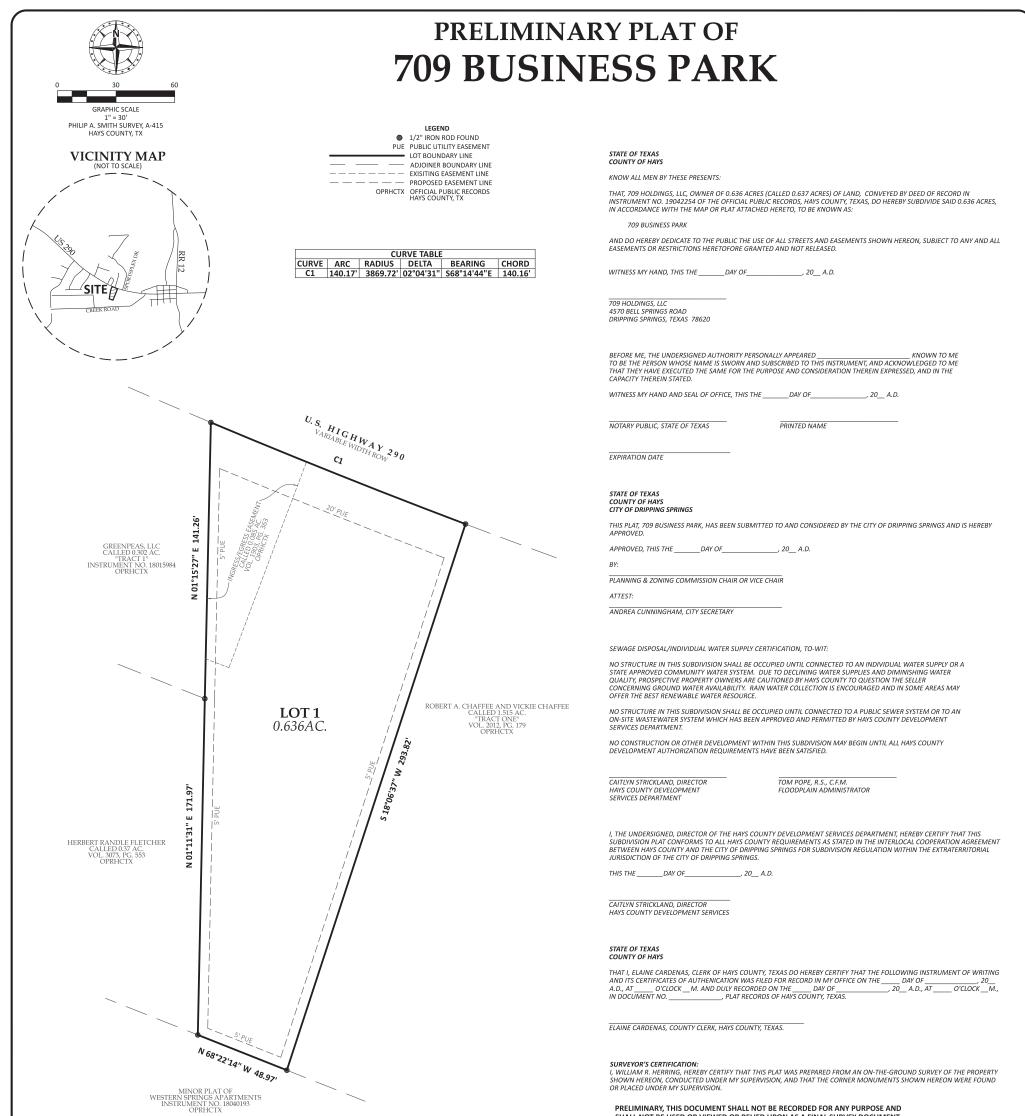
By signing below, I acknowledge that I have read and agreed to these terms and conditions and ccept responsibility for conforming to the above stated ordinance specifications:

Signature

May 7, 2021

Date

Item 4



- PLAT NOTES: 1. BEARING BASIS IS GRID NORTH, TEXAS COORDINATE SYSTEM, NAD83 (2011) SOUTH CENTRAL ZONE. UNITS = US SURVEY FEET.
- 2. THIS SUBDIVISION LIES WITHIN ZONE "X", DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ACCORDING TO FEMA MAP NO. 48209C0105F, DATED SEPTEMBER 2, 2005.
- 3. THIS SUBDIVISION IS IN THE CONTRIBUTING ZONE TO THE EDWARDS AQUIFER: THIS SUBDIVISION IS NOT IN THE RECHARGE ZONE TO THE EDWARDS AQUIFER
- 4. THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE LIMITS OF THE CITY OF DRIPPING SPRINGS.
- 5. THIS SUBDIVISION IS LOCATED WITHIN THE BOUNDARIES OF THE DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT.
- 6. WATER SERVICE WILL BE PROVIDED BY DRIPPING SPRINGS WATER SUPPLY CORPORATION.
- 7. ELECTRIC SERVICE WILL BE PROVIDED BY THE PEDERNALES ELECTRIC COOPERATIVE.
- 8. TELEPHONE SERVICE WILL BE PROVIDED BY VERIZON.
- 9. A STRIP 20' WIDE IS RESERVED ALONG ALL ROADWAYS AND A 5' STRIP IS RESERVED ALONG ALL OTHER PROPERTY LINES FOR PUBLIC UTILITIES.
- 10. DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.
- 11. WASTEWATER TREATMENT FOR THIS SUBDIVISION IS TO BE PROVIDED BY INDIVIDUAL ADVANCED ON-SITE SEWAGE FACILITIES AS APPROVED BY HAYS COUNTY DEVELOPMENT SERVICES.
- 12. THIS DEVELOPMENT SHALL COMPLY WITH THE CITY OF DRIPPING SPRINGS LIGHTING ORDINANCE.
- 13. THIS SUBDIVISION LIES WITHIN HAYS COUNTY ESD #1 AND ESD #6.
- 14. ALL CULVERTS, WHEN REQUIRED SHALL COMPLY WITH THE CURRENT HAYS COUNTY STANDARD.
- 15. IMPERVIOUS COVER SHALL COMPLY WITH THE WATER QUALITY PLAN APPROVED FOR THIS SUBDIVISION AND SHALL NOT BE ALTERED.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT DATE

WILLIAM R. HERRING REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6355 - STATE OF TEXAS



WHITECAP SURVEY COMPANY, LLC TBPLS FIRM NO. 10194424 PO BOX 1225 DRIPPING SPRINGS,TX 78620 (512) 808-0102 EMAIL: INFO@WHITECAPSURVEY.COM

		ADMINISTRATIVE APPROV	AL PROJECTS	
Site Development Project Name	City Limits / ETJ	Location	Description	Status
SD2019-0006_Dog N Bone	CL	310 Old Fitzhugh Rd	Food Trailor and Site improvements	Waiting on resubmittal
SD2019-0017 Storserv	ETJ	E Hwy 290	Self Storage facility	Approved w conditions
SD2019-0024 Jasons Deli	CL	165 Hargraves Dr	Restaurant	Waiting on resubmittal
SD2019-0025 Merrit Hill Country Amendment SD2019-0036 Hart Lane Homes	CL	28725 RR 12	minor amendment	Waiting on resubmittal
	ETJ	120 Hart Lane 31430 Ranch Road 12, Dripping	3 SF homes	Waiting on resubmittal
SD2020-0006 Ghost Hill Ranch Phase 2	ETJ	Springs, Texas	Two Commercial Buildings	Approved with Conditions
SD2020-0016 100 N Canyonwood Dr	etj	100 N Canyonwood Dr	2 office buildings	Waiting on resubmittal
SD2020-0024 421 Sportsplex Correction	cl limited	421 Sportsplex	adding retaining wall Construction of an assisted living building, parking	Waiting on resubmittal
SD2020-0027 Velocity Credit Union	purpose district	Lot 1 Block E of Bush Ranch Phase 1 Revised Subdivision	areas, water service line, on-site sewage facility, and storm water detention pond.	Waiting on resubmittal
SD2020-0029 Headwaters Phase II	CL	Kibo Ridge and Hwy 290	this project includes the construction of four 3-story apartment buildings, associated parking and drives, and utilities	Approved w/ Conditions
SD2020-0030 Howard Ranch Commercial	CI	FM 150 and RR12	one 5. 110-sf general store/fueling station, two 10,400-sf retail stores, two 6.800-sf retail stores. One 17.600-sf retail store, and a 10,350-sf live/work building to be located on 7.391 acres	Approved
SD2020-0031 ATX Drainage and Landscaping	ETJ	13400 Nutty Brown Road	construction of a landscape yard, associated 6.055 sqft office/warehouse and parking	Waiting on resubmittal
SD2020-0032 Big Sky Ranch Amenity Center	CL	Lone Peak Way	amenity center for Big Sky Ranch within Phase 2	Under Review
SD2020-0036 Arrowhead Ranch Amenity Center Revision	CI	Arrowhead Ranch Blvd	Proposed Site Development for future arrowhead ranch amenity Center	Approved w/ conditions
SD2020-0040 Forbes Tract Revision	ETJ	14300 FM 1826	proposed revision would include switching from a bar ditch conveyance system to an underground drainage system	Approved w conditions
SD2020-0042 31300 RR 12 Vet Clinic	ETJ	31300 RR 12	permitting an existing gravel parking lot	Waiting on resubmittal
SD2020-0045 12 South	CL	4500 RR 12	8,000 Sq ft warehouse w associated parking and drainage	Waiting on resubmittal
SD2020-0047 Dripping Springs RV Resort	ETJ	3601 W US 290, Dripping Springs,	335 RV lots with associated roadway and drainage. All	Waiting on resubmittal
SD2020-0048 Patriots Hall of Dripping Springs	ETJ	3400 E US 290	New VFW Builiding with parking infrastructure and water quality	Approved w/ Conditions
SD2021-0001 Belterra Active Adult	ETJ	TBD	Multifamily development with associated parkig and utility improvements	Approved w/ Conditions
SD2021-0002 Driftwood Greeter House	ETJ	214 Thurman Roberts Way	2,100 sq-ft guard house adjacent to entrance gate into Driftwood Subdivision, small driveway connecting the northbound and southbound sides of Thurman Roberts Way, and 3 parking spaces.	Under Review
SD2021-0004 AAA Self-Storage Expansion	CL	2300 Hwy 290	Addition of 2 self-storage buildings, 50,000sqft and 20,400 sqft and connecting pavement	Under Review
SD2021-0005 Dripping Springs WWTP Expansion	CL	23127 FM 150 W	Expansion of the Wastewater treatment plant	Under Review
SD2021-0008 AHC Development (aka PDD 11)	CL	27110 RR 12	Construction of a new Multi-Familty complex and its necessary infrastructure and a public extension of S Rob Shelton Blvd	Waiting on resubmittal
SD2021-0011 Blue Ridge Business Park	CL	26228 RR 12	6 small office buildings with associated parking and utilities	Waiting on resubmittal
SD2021-0012 Pet Paradise	ETJ	13526 W Hwy 290	This project is a per retrear facility with ounding, parking, and utilities. The site will drain via a storm sewer network to an existing shared water quality	Waiting on resubmittal
SD2021-0013 Dreamland	ETJ			Waiting on resubmittal
SD2021-0014 Cottages East at Bunker Ranch	CL			Waiting on resubmittal
SD2021-0007 Driftwood Club Core Tranche 1	ETJ	Driftwood Club Core	7 commerical cabin buildings along an existing culdesac within the Driftwood Club Core subdivision	Withdrawn
SD2021-0019 Arrowhead Parkland	CL	Arrowhead Ranch Blvd	Parkland and trails for arrowhead	Approved
SD2021-0017 Hays County WCID No. 2 Trail Extension	ETJ	Belterra		Approved
Project SD2021-0018 P. Terry's Burger Stand	ETJ	12680 W. US 290 Suite 200	Construction of 1,100 sq. ft dual lane drive through	Under Review
SD2021-0010 P. Terry's Burger Stand SD2021-0020 Ledgestone Commercial Access Drive	ETJ	Ledgestone	Access easements for future developments such as P. Terry's, Panda Express, Popeyes	Under Review
SD2021-0022 Sawyer Ranch Lot 4A	ETJ	13341 W US HWY 290	Commercial buildings, parking, utilities and sidewalks on 4.68 acres of the Sawyer Ranch subdivision	Under Review
SD2021-0016 Headwaters Professional Office Rev.	CL	Kibo Ridge and Hwy 290	Revision to Headwaters Professional Office to use fill Block A Lot 2	Under Review
SD2021-0024 Skye Headwaters Minor Amendment 3	CL	201 Headwaters	176 Unit, Senior Living Multi Family Community	Under Review
SD2021-0025 DS Rapid Express Wash	CL	Fourstar Blvd	Car Wash	Under Review
SD2021-0026 Belterra Mighty Fine	ETJ	Belterra	Mighty Fine Burgers	Under Review
SD2021-0027 Driftwood Pond 2B Club Core	ETJ	Driftwood Club Core	Water Quality Pond	Under Review

Subdivision Project Name	City Limits / ETJ	Location	Description	Status
Driftwood Phase 3	ETJ	17901 RM 1826	1 lot subdivision	Waiting on the County
SUB2018-0038_Caliterra Ph 4 Sec 11_FP	ETJ	RR12 & FM 150	Subdivision of 108 Residential lots	Turned in Plat amendment adding additional ROW, Comments have been issued.
SUB2018-0061 Headwaters at Barton Creek_AP	ETJ	2401 E Hwy 290	Edits to metes and bounds error	Waiting on resubmittal/ everyone approved as of 6/25/2019
SUB2019-0017 Parten Ranch Amenity Center MP	ETJ	NW Corner of Two Creeks Lane and Parten Ranch Pkwy	1 Lot for amenity center	Waiting on the County
SUB2019-0041 Headwaters Ph. 4 Sec. 6 CP	ETJ	Intersection of Headwaters Blvd and Hazy Hills Loop	4 Lot subdivision	Waiting on the County
SUB2019-0044 Caliterra Ph/2 Sec 7 Block F Lot 9 AP	ETJ	Peakside Circle	amended plat	waiting on resubmittal
SUB2018-0055 Quik Trip #4133 Addition Minor Plat	CL	16460 Sawyer Ranch Rd	remaining portion of tract A of the Sawyer Springs Subdivision P.R.	waiting on resubmittal
SUB2020-0020 Polo Business Park East MP SUB2020-0048 611 Butler Ranch Road MP	etj ETJ	13550 US 290 611 Butler Ranch Road	1 lot subdivision to create a legal lot Subdividing 13.03 acres into 2 lots.	Approved with conditions Approved with conditions
SUB2021-0002 Roger Hanks Parkway Extension	CL	Roger Hanks Parkway	3120 LF of Collector Roadway. The infrastructure includes all associated streets, grading, and water quality improvements.	Waiting on Resubmittal
SUB2021-0004 Driftwood phase 3 Minor revision	ETJ	Thurman Roberts Way	Adjusting Road and removing lots	Approval with conditions
SUB2021-0007 Headwaters phase 3-5 PP Minor revision	ETJ		Adjusting lots	Approved with conditions
SUB2021-0009 Glass Business Park CP	CL	2650 W Hwy 290	Construction Plans for Glass Business Park Project will be developed in a condominium regime with	Under Review
SUB2021-0016 Driftwood Club Core Phase 3 SP and CP	ETJ	Thurman Roberts Way	9 detached residential unites and a parking lot. The site will be accessed via driveway that ties to a driveway that is a part of Driftwood Club Core Phase 2 that ties to Thurman Roberts Way,	Under Review
SUB2021-0023 Bunker Ranch 3-4 Preliminary Plat Minor Revision	CL	2751 US 290	A revision to the approved Buunker Ranch Phase 3 and 4 Preliminary Plat to create a ROW reserve for the future connection of the Florio Tract and adjust affect lots.	Approved
SUB2021-0024 Crooked Oaks Amending Plat	ETJ	823 Post Oak Drive	Adjusting lot lines	Denied
SUB2021-0025 102 Rose Drive Minor Plat SUB2021-0026 Bunker Ranch Phase 2-4 Construction Plans Minor Revision	CL	102 Rose Drive 2751 US 290	1 lot subdivision to create a legal lot A revision to the approved Buunker Ranch Phase 3 and 4 Construction Plans to follow the corresponding Preliminary Plat Minor Revision	Waiting on Resubmittal Approved
SUB2021-0027 Parten Ranch Phase 4 Construction Plans	ETJ	600 Two Creek Lane	Phase 4 consists of 73.84 acres with 87 single family lots, 1 utility lot, 4 drainage/open space lots and right of way.	Approved
SUB2021-0029 Driftwood Creek Ph 2 Prelim Plat	ETJ	Thurman Roberts Way	23 lots on 19.30 acres for the Driftwood Ph 2 Prelim Plat	Waiting on Resubmittal
SUB2021-0030 Bunker Ranch Ph 4 Final Plat	CL	2751 US 290	Subdivision of phase 4 of Bunker Ranch, 28 lots on 38.94 acres	Approved
SUB2021-0032 Daisy Acres Minor Plat	ETJ	100 Daisy Lane	Establish a lot	Under Review Denied
SUB2021-0033 Arrowhead Ranch C-Store Minor Plat SUB2020-0028 CRTX Prelim Plat	CL	27110 RR 12	establish 2 commerical lots Establish a lot	Waiting on Resubmittal
SUB2020-0029 CRTX Final Plat	CL	27110 RR 12	Establish a lot	Waiting on Resubmittal
SUB2021-0034 Caliterra Ph 4 Sec 12 Construction Plans	ETJ	Premier Park Loop amd Misty Meadows	42 singlfamily lots on 65.17 acres with associated infrastructure	Waiting on Resubmittal
SUB2021-0035 Heritage Phase 2 Construction Plans	CL	Sportsplex Drive (Heritage Development)	165 lot (162 residential lots, 2 drainage lots, and 1 parkland lot), 33.96 acre Phase of the Heritage Subdivision	Under Review
SUB2021-0036 Springlake Lot 76A-1 Replat	CL	501 Springlake Dr	replating to 2 lots	Approved with conditions
SUB2021-0037 Headwaters at Barton Creek Ph 5 Sec 1&2 Construction Plans Minor Revision	ETJ	Headwaters Blvd	Construction plan revision to Phase 5 Section 1 and 2	Approved
SUB2021-0038 Big Sky Ranch Phase 3 Construction Plans	CL	Lone Peak Way	Construction Plans for Phase 3 of Big Sky Ranch	Under Review
SUB2021-0039 Big Sky Ranch Phase 4 Construction Plans	CL	Lone Peak Way	Construction Plans for Phase 4 of Big Sky Ranch	Under Review
SUB2021-0044 Driftwood Phase 1 Section 3 Final Plat	ETJ	Thurman Roberts Way	Proposing 20 single family lots, 4 open space lots and 2 private street lots on 42.17 acres	Under Review
SUB2021-0045 Driftwood Phase 1 Section 3 Construction Plans	ETJ	Thurman Roberts Way	Proposing 20 single family lots, 4 open space lots and 2 private street lots on 42.17 acres	Under Review
SUB2021-0012 Caliterra Ph 4 Sec 12 FP	ETJ	Premier Park Loop	47 lots on 65.172 acres with associated infrastructure 34 lots on 56.3328 acres with average lot size as	Under Review
SUB2021-0046 Driftwood GRC Ph 3 Final Plat	ETJ	Driftwood Ranch Drive	1.6568 acres	Under Review
SUB2021-0047 Driftwood GRC Ph 3 Construction Plans	ETJ	Driftwood Ranch Drive	Proposing 30 single family lots, 1 open space lot and 3 private street lots on 56.3328 acres	Under Review
SUB2021-0048 Driftwood Ph 1 Section 4 Final Plat SUB2021-0049 Grand Prairie Lot 1 Replat	ETJ CL	Thurman Roberts Way 27950 RR 12	A one lot plat for 4.7233 acre land A replat of one lot of 1.698 acre	Under Review Under Review
SUB2021-0049 Grand Prairie Lot 1 Replat SUB2020-0034 Heritage Ph 1 Fp	CL	27950 RR 12 Sportsplex Drive (Heritage Development)	A replat of one lot of 1.698 acre Heritage Final Plat	Under Review
SUB2021-0050 Club Core Phase 4 Construction Plans	ETJ	Thurman Roberts Way	Construction plans for Driftwood Club Core phase 4	Under Review
SUB2021-0051 Hardy T Land Preliminary Plat	ETJ	2901 W US 290	Condminium of 7 lots	Under Review
SUB2021-0053 Amending Plat of Creek Road Villas SUB2021-0054 Driftwood Subdivision Phase 2 Final	CL	1232 Creek Road	Changing the configuration of lots 1 & 2	Under Review
Plat	ETJ	Thurman Roberts Way	Final Plat for Driftwood phase 2	Under Review
SUB2021-0052 Cannon Ranch Preliminary Plat SUB2021-0056 Driftwood Subdivision Phase 2	CL	Cannon Ranch Road	100.58 acre development of 375 lots Proposing 18 single family lots, 3 open space lots and	Under Review
Construction Plans	ETJ	Thurman Roberts Way	2 private street lots on 19.30 acres	Under Review
SUB2021-0055 210 Creek Road	CL	210 Creek Road	Amending plat on 4 acres	Under Review

Regulating Condominium Projects

TCAA Summer Conference

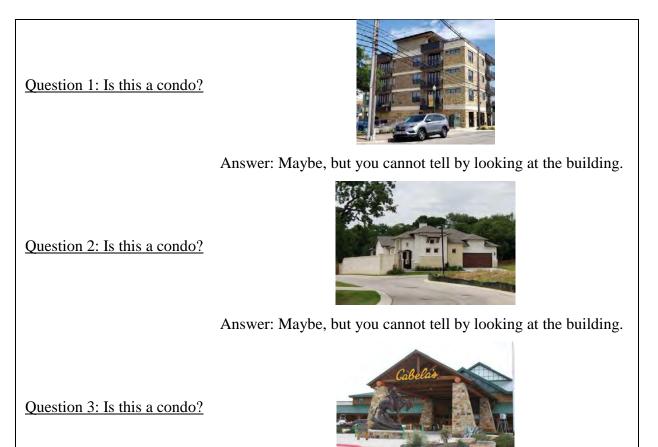
June 20, 2019

Tad Cleaves Associate Attorney Bojorquez Law Firm tad@texasmunicipallawyers.com Skye Masson First Assistant City Attorney City of Georgetown skye.masson@georgetown.org

Summary

Condominiums (or "condos" herein) are interesting land use vehicles that may be misunderstood by city planners, staff, and attorneys, leading to improper regulation. The purpose of this paper is to give government-side municipal attorneys, planners, and other city staff the background required to push back against arguments that condominiums, for some reason, deserve different regulatory treatment than other developments based simply on the fact that they are *condominiums*. Condominiums are a form of real property ownership that are not exempt by state law from municipal or county regulation. Additionally, the municipal and county subdivision requirements of the Texas Local Government Code can apply to a condominium development depending on its physical layout. This paper will detail what condominiums actually are and how a city can regulate them.

Pop Quiz: Is this a Condo??



Answer: Maybe, but you cannot tell by looking at the building.

How did you do? The answer in all three cases above, was "yes." Those are all condominiums. Each of those buildings is a fundamentally different type of construction: High-Rise Multi-Family construction vs. Single-Family Detached vs. Big-Box Retail. And each of the different structures can house different uses: commercial vs. residential vs. mixed-use. Yet all are "condominiums." If it isn't the structure or the land use that defines a condo, what is it?

A Condominium is a Form of Ownership

The Texas Uniform Condominium Act ("TUCA") defines "condominium" as, "... <u>a form</u> <u>of real property</u> with portions of the real property designated for <u>separate ownership or occupancy</u>, and the remainder of the real property designated for <u>common ownership or occupancy</u> solely by the owners of those portions."¹ "Condominium" <u>only</u> refers to ownership. "Condos" <u>are not</u> a type of building construction, nor are they a use of real property.

Large, vertical, apartment-like developments often take advantage of the condominium



Traditional High-Rise Condominium

form of ownership, because it allows for collective ownership, control and maintenance of shared portions of the development (known as "common elements"), while allowing for individual ownership of "units" within the condo project. This joint ownership provides the legal structure that allows the individual

owners to collectively maintain pools, tennis courts, parks, parking structures, community spaces or other shared amenities, while still having their individually-owned, private spaces.

While people may often picture a high-rise apartment building on a beach or in a city when they talk about condos, there is no requirement that condo developments be vertical construction of a single, shared building. The condominium form of ownership has been used for high-rise apartment buildings, industrial parks, retail commercial developments,



several different types of residential developments including developments of detached, singlefamily homes (so-called "site condominiums"), and likely many other types of real estate uses. Again, the take-away here is that a "condo" is a form of collective property ownership and not a specific type of building or a use of real property.

How is a Condominium Created?

Commonly, condominiums are created on a single legal lot of real estate. Whether it is a high-rise apartment development on a single urban block or a 150-acre single family detached residential neighborhood, condos often involve a single tract of land. The condominium is created by recording a document called a "condominium declaration" ("Condo Dec") in the deed records of each county in which the condo is located.² The TUCA contains a list of items that must be in

¹ Tex. Prop. Code §82.003 (2017).

² Tex. Prop. Code §82.051 (2017).

a condominium declaration,³ but at its core, a Condo Dec describes the condo development's physical layout, the rules of joint ownership and creates the individual condo units. A copy of a recorded condominium declaration is attached to this paper as Appendix A for reference. Once a valid Condo Dec is recorded (and not terminated), the real property affected by the Condo Dec is a condominium.

The Intersection of TUCA and Municipal Regulation

The Texas Uniform Condominium Act makes clear that the creation of a condominium does not exempt the property or development from municipal regulation. The same section that details the creation of condominiums also states that, "this chapter <u>does not affect or diminish the</u> <u>rights of municipalities and counties</u> to approve plats of subdivisions and enforce building codes as may be authorized or required by law (emphasis added)."⁴ Additionally, the TUCA, "...does not invalidate or modify <u>any provision</u> of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation (emphasis added)."⁵ These provisions of the TUCA are important because they show that within the chapter of the Property Code that governs all new condominium developments, the plain text allows for full municipal regulation of condominiums.

Physically Identical Developments

While condo projects receive no exemption from municipal regulation, municipalities cannot "...<u>prohibit the condominium form of ownership</u> or impose any requirement on a condominium that it would not impose on a <u>physically identical development under a different</u> form of ownership (emphasis added)."⁶ This brings us back to the Pop Quiz at the start of this paper. To follow TUCA, municipal authorities should not look at a proposed development and ask themselves, "Is this a condo?" They should look at a proposed development, <u>regardless of ownership structure</u>, and follow the same regulations for all developments that look physically identical. If a development looks like a vertical, multi-family high-rise, all developments like that should be subject to the same municipal rules. Likewise, if the development looks like a single-

³ Tex. Prop. Code §82.055 (2017).

⁴ Tex. Prop. Code §82.051(e) (2017).

⁵ Tex. Prop. Code §82.006 (2017).

⁶ Id.

family residential development, they should be subject to the same rules regardless of the form of ownership. To do otherwise risks violating TUCA.

What About Subdivision Plats and Condominiums?

What the Condo Dec does not do is alter the size of the legal lot on which the condo regime is situated. Routinely, Condo Decs will contain a statement that 'This Condominium IS NOT a Subdivision of Real Property.'⁷ The action of land "subdivision" is one of the triggers for municipal land use regulation in local codes and the trigger for state platting requirements in Chapters 212⁸ and 232⁹ of the Texas Local Government Code. And because the Condo Dec may not divide the legal lot into smaller legal lots on which the condo is situated, landowners argue that condominiums are not "subdivisions of land" and are, therefore, exempt from county and municipal subdivision and platting requirements. This view is incorrect. A condominium <u>might</u> be a subdivision of land triggering platting requirements.

Whether a condo is a subdivision of land depends on what the landowner is doing with the property. For property located inside the limits of a city a subdivision plat is required when:

[T]he owner of a tract of land ... divides the tract into <u>two or more parts</u> to lay out ... suburban, building, or other lots, or to lay out streets, alleys, squares, parks, <u>or</u> <u>other parts of the tract intended to be dedicated to public use or for the use of</u> <u>purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares,</u> <u>parks, or other parts</u> [the owner] must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, <u>or by using any other method</u> (Emphasis added)."¹⁰

This platting requirement does not take ownership structure into account and only addresses the functional use of the property – Is a tract of land being divided into smaller *parts* for use by owners? If the answer is "yes," this is a subdivision of land requiring platting. Not to put too fine a point

⁷ See Appendix A, Page 15.

⁸ Tex. Loc. Gov't. Code §212.004 (2017).

⁹ Tex. Loc. Gov't. Code §232.001 (2017).

¹⁰ Tex. Loc. Gov't. Code §212.004 (2017).

on it, but Condo Decs "divide" "a tract of land" into "parts" to "lay out buildings" or "other parts" "intended" "for the use of purchasers or owners of lots" or "other parts." The fact that a property is being owned as a condominium does not to exempt it from subdivision platting. Additionally, Chapter 232 of the Texas Local Government Code contains nearly identical requirements for platting a subdivision of property outside the limits of a municipality.¹¹

Ultimately, what matters is not the form of ownership of the property but what is physically being developed on the land. The Condo Dec should contain enough detail to inform city planners about what type of development is being contemplated – multifamily, single family detached, industrial park, etc. – and the City should then treat the condo development just like it would treat a physically identical development owned in a different manner. For example, a high-rise apartment development might not require a new subdivision plat, while a residential development of a single-family detached homes likely would.

While there is no caselaw in Texas that definitively applies Chapters 212 or 232 of the Texas Local Government Code to a condominium, there is an Attorney General opinion that supports the position that condominiums can be subdivisions of land.¹² A copy of the Opinion is attached hereto as Appendix B. In its opinion, the Attorney General addresses two questions from Hays County:

- 1. Whether a condominium development pursuant to Chapter 82, Texas Property Code, is subject to the regulatory control of the county under the subdivision statutes contained in Chapter 232 of the Local Government Code; and
- 2. Does Section 232.100, Texas Local Government, allow urban counties to require condominium or other multi-unit developments (a building, structure or combination of structures which have been designed to contain units in which more than two families may reside) to meet subdivision or infrastructure planning requirements?¹³

These questions were asked by a county official in reference to a condominium development comprised of 17 single-family structures and some common elements. The county took the

¹¹ Tex. Loc. Gov't. Code §232.001 (2017).

¹² Tex. Att'y Gen. Op. No. GA-0223 (2004.)

¹³ *Id.* at 3.

position that because the development appeared to be "similar to typical single family residence[s]" that the development should be subject to Chapter 232's subdivision platting requirement.¹⁴ The landowner disagreed, arguing, among other things, that because unit owners owned an interest in all the common elements, the property, in fact, could not logically be being subdivided.¹⁵ Ultimately, the Attorney General reviewed a number of cases that discussed the idea of subdivision in different contexts (none in the context of a condominium) and decided that county officials could determine that a, "...condominium development constitutes a subdivision that must be platted."¹⁶ The Attorney General also dismissed the landowner arguments that condominiums are exclusively regulated by the TUCA, stating that, "... [Texas Property Code] Section 82.006 precludes a county from discriminating against condominiums but expressly preserves a county's authority to regulate them as subdivisions."¹⁷ The second question the Attorney General Opinion applies only to counties, so it will not be addressed herein other than to say that the Attorney General found in favor of county regulation of condominiums.¹⁸ While this Attorney General Opinion is not binding precedent, it interprets the same laws discussed herein and comes to the same conclusion: That condominium developments are not exempt from county or municipal regulations.

Other States Caselaw

Below is a brief and incomplete survey of a few cases from other states that have also adopted the Uniform Condominium Act. In the absence of Texas cases on point, looking to caselaw from states can be instructive. This is an *extremely* brief look at just a few cases. The point here is to give the reader an idea that if a unique set of facts comes up and there is no caselaw on point in Texas, looking at cases from the 14 other states that have adopted the Uniform Condominium Act can be instructive.¹⁹

¹⁴ *Id*. at 1.

¹⁵ *Id*. at 5.

¹⁶ *Id*. at 6.

¹⁷ *Id*. at 7.

¹⁸ *Id*. at 8-9.

¹⁹ Alabama, Arizona, Kentucky, Maine, Minnesota, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, Texas, Virginia, Washington and West Virginia all adopted the Uniform Condominium Act. Note that individual states may have amended the law over time, so the exact wording can vary state-to-state.

Alabama:

Dyess v. Bay John Developers II, L.L.C., 13 So.3d 390 (Ala. Ct. Civ. App. 2007)

This case involved the development of a condo project in a county in Alabama. The developer sued for a declaratory judgment asserting, in part, that condos are not subdivisions of land; and therefore, the county could not apply its subdivision regulations. The Court of Civil Appeals of Alabama disagreed, stating that, "subdivision regulations do not distinguish between various types of multifamily developments, such as apartments, duplexes, or condominiums."²⁰ The Court was also interested in the official commentary to the Alabama Uniform Condominium Act which stated that, "[b]ecause it involves the division of land into two or more parcels, technically a condominium involves a subdivision of real estate."²¹ Additionally, since the regulations sought to be imposed by the county on the development were being applied to all "physically identical development" making "...no distinction between condominiums and other multifamily developments, such as apartments, in their application" the regulations were valid and enforceable.²² This case is instructive because it not only holds that condominiums are not exempt from regulations simply because they are condominiums and but also holds that they can be subdivisions of land based on the physical characteristics of the development.

Pennsylvania

Frank N. Shaffer Family Limited Partnership v. Zoning Hearing Board of Chanceford Township. 964 A.2d 23, 28-29. (Commonwealth Ct. Penn. 2009).

This is another argument over whether a condominium constituted a subdivision of land, but in this case, the development in question was a "condominium conversion" of a planned community. In the condominium conversion, ownership interest was changed slightly among the three unit owners, and there was a change in lot lines and a conveyance of a unit to a different owner. This case is useful, because it shows that simply conversion to a planned community form of ownership does not trigger subdivision regulations if nothing material is changing in terms of lot or unit configuration or construction.²³ This reinforces the idea that the dispositive

²⁰ Dyess v. Bay John Developers II, L.L.C., 13 So.3d 390, 397 (Ala. Ct. Civ. App. 2007).

 $^{^{21}}$ *Id*.

²² Id. at 396.

²³ Frank N. Shaffer Family Limited Partnership v. Zoning Hearing Board of Chanceford Township. 964 A.2d 23, 28-29. (Commonwealth Ct. Penn. 2009).

characteristics for regulation of condominiums is not the fact that the property is a condominium, it is what the development physically looks like and is there a substantive change that would trigger regulation.

Rhode Island

McConnel v. Wilson, 1987 WL 882326 (R.I. Sup. Ct. 1987)

This case was a mandamus action that arose when a Town Clerk refused to record condominium declaration and condo plat before the developer had gone through local review.²⁴ The developer was converting the ownership structure of a retail store into a condominium without making any other significant changes.²⁵ The Clerk believed that the Plaintiff's condo conversion triggered subdivision regulations and refused to record the declaration.²⁶ The Rhode Island condominium act language is very similar to the TUCA language regarding equal treatment for physically identical developments:

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership, or otherwise regulate the creation, governance or existence of the condominium form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.²⁷

The court held that because no change was made to the development *other than the form of ownership*, that to make a condominium conversion go through zoning or subdivision processes, when a physically identical development owned in another way would not have to would violate the Rhode Island Condominium Act.²⁸ Additionally, this case is of interest, because the court

²⁸ *Id.* at 2.

²⁴ McConnel v. Wilson, 1987 WL 882326, 1 (R.I. Sup. Ct. 1987)

²⁵ Id.

²⁶ Id.

²⁷ Id.

makes the point that a condominium is a form of ownership and not a use designation for property.²⁹

Michigan:

Stanley Building Co. v. City of St. Clair Shores, Not Reported in N.W.2d (2004)

Developer owned two single-family lakefront lots and recorded master deed to condo the lots and create seven single-family condo units and a private road. The City treated them like a residential subdivision and denied the permits. Developer sued citing a lack of city authority to regulate the project. The Michigan Condominium Act is like the Texas law in terms of non-discrimination based on ownership:

A condominium project shall comply with applicable local law, ordinances, and regulations. Except as provided in subsection (2), a proposed or existing condominium project shall not be prohibited nor treated differently by any law, regulation, or ordinance of any local unit of government, which would apply to that project or development under a different form of ownership.³⁰

Because the detached condominium units resemble homes (physically identical), the trial court concluded that the proposed development was not unlike a traditionally platted subdivision, and the appellate court affirmed.³¹

Solutions Available under Texas Law

Given the legal framework summarized above for condos in Texas, cities and counties must treat condos the same as physically identical projects and tackle the question of subdivision and equality of regulations. Chapter 212 provides two solutions discussed briefly below that may or may not be a solution for a city grappling with how to regulate condominium projects the same as physically identical projects.

²⁹ Id.

³⁰ Stanley Building Co. v. City of St. Clair Shores, 2004 WL 1676575, 2 (2004)

³¹ *Id.* at 1

Require Subdivision Plat

As previously discussed, the creation of certain condominium units can result in a subdivision of land subject to Subchapter A of Chapter 212 and local subdivision regulations.³² While this solution appears on its face to be the most straightforward approach to regulation of condominiums, it presents legal and practical problems.

First, as shown in Appendix A, many condominium declarations contain language proclaiming on its face that it is not a subdivision of land. Despite the law indicating that may not always be the case, every developer will contest a City or County's position that a condominium project is a subdivision of land and will most likely bring in their condominium expert attorneys to argue their case. While some cities or counties may have their own legal counsel to provide the legal argument as to why that particular condominium project is a subdivision of land, many smaller cities may not have that luxury.

Second, development whether condominium form of ownership or lot ownership typically begins with zoning and subdivision. Its only after a developer has approved zoning and an approved plat, if one is required at all, that a Condo Dec is drafted and filed. A city has no authority to regulate the Condo Dec or review the documents prior to filing. It is only after the declaration has been filed and the developer comes to the city for the next required approval that the city can require a replat to capture the subdivision of land created by the condominium units. This timing issue is solvable but may cause an additional level of confusion.

Adopt Development Plat

In addition to the automatic requirement for a subdivision plat in Chapter 212, a city may choose by ordinance to be covered by Subchapter B of Chapter 212 and require development plats.³³ In order to do so, a city must hold a public hearing and determine plans, rules or ordinances that will govern development plats insides its city limits and its extraterritorial jurisdiction.³⁴ Once adopted, Subchapter B applies to "any person who proposes the development of a tract of land."³⁵

³² See supra, pages 4-7

³³ Tex. Loc. Gov't. Code §214.041 (2017).

³⁴ *Id.* at §214.044.

³⁵ *Id.* at §214.045(a).

For purposes of Subchapter B, development means "the new construction of the enlargement of any exterior dimension of any building, structure, or improvement."³⁶ A development plat must be prepared by a registered professional land surveyor and show (1) each existing or proposed building, structure or improvement or proposed change to the external configuration of an existing building; (2) easements and rights-of-way; and (3) the dimensions of each street, sidewalk, alley, square, park or other property intended for use by the public or for use by the owners of lots of fronting the street, alley, sidewalk, or right-of-way.³⁷ A development plat is processed in the same manner as a subdivision plat, and no building permit can be issued without approval of a development plat.³⁸

If adopted, the requirement for a development plat would potentially solve the regulatory challenge presented by condominium developments. Because "development" includes the construction of any building and is not dependent on the determination of whether a subdivision of land has occurred, almost all condominium regimes would be required to obtain a development plat.³⁹ One potential challenge is resistance to the adoption of Subchapter B. In cities where property owners and developers have become accustomed to the advantages of developing property exempt from subdivision requirement under Subchapter A, there may be strong resistance to development plats during the adoption process.

Conclusions

Hopefully you did not learn anything new from this paper. "Condominium" describes the ownership form of real estate – not a type of development, use or building type. The TUCA does not restrict municipal regulation, and there are other tools such as development plats which can also help ensure Texas cities and their residents are getting the quality developments they deserve.

³⁶ *Id.* at §214.043.

³⁷ *Id.* at §214.045(b).

³⁸ Id. at §214.044.

³⁹ One exception to this statement could be the conversion of existing property to condominium regime. If the conversion did not change the exterior dimensions of any building, it would not trigger a development plat requirement.

Appendix A



112 PGS COND 2011 Item 6.

AFTER RECORDING RETURN TO:

KEVIN M. FLAHIVE ARMBRUST & BROWN, PLLC 100 CONGRESS AVE., SUITE 1300 AUSTIN, TEXAS 78701

DECLARATION OF CONDOMINIUM REGIME FOR EDGEWATER CONDOMINIUMS

(A Residential Condominium in Williamson County, Texas)

Declarant: THE BROHN GROUP, LLC, a Texas limited liability company

Item 6.

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DECLARATION OF CONDOMINIUM REGIME FOR EDGEWATER CONDOMINIUMS

SPANISH CREEK DEVELOPMENT, INC., a Texas corporation ("Property Owner"), is the owner of the Property, as defined below. The Property Owner hereby appoints THE BROHN GROUP, LLC, a Texas limited liability company ("Declarant"), as Declarant. The Property is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Edgewater Condominiums through the recordation of this Declaration of Condominium Regime for Edgewater Condominiums (this "Declaration").

NOW, THEREFORE, it is hereby declared that the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on <u>Appendix A</u>, attached hereto, which will run with the Property, together with all improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

Unless otherwise defined in this Declaration, terms defined in Section 82.003 of the Act have the same meaning when used in this Declaration. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1 "**Act**" means Chapter 82 of the Texas Property Code, the Texas Uniform Condominium Act, as it may be amended from time to time.

1.2 "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3 "Architectural Reviewer" means Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

1.4 **"Assessment**" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or other Applicable Law, including but not limited to Regular Assessments, Landscape Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in *Article 6* of this Declaration.

1.5 **"Association**" means the EW Condominium Community, Inc., a Texas non-profit corporation, d/b/a Edgewater Condominium Community, the Members of which shall be the Owners of Units within the Regime. The term "Association" shall have the same meaning as the

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term "property owners association" in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and the Act.

1.6 "**Board**" means the Board of Directors of the Association.

1.7 **"Building**" means each residential dwelling constructed within a Unit. Declarant has reserved the right to add additional Units and Buildings to the Regime as permitted in <u>Appendix A</u>, attached hereto.

1.8 **"Bylaws**" mean the bylaws of the Association, as they may be amended from time to time.

1.9 "**Certificate**" means the Certificate of Formation of the Association filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

1.10 "**Common Elements**" means all portions of the Property save and except the Units. All Common Elements are "**General Common Elements**" except if such Common Elements have been allocated as "**Limited Common Elements**" by this Declaration or the Act for the exclusive use of one or more but less than all of the Units.

1.11 **"Community Manual**" means the community manual adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association. The Community Manual may be amended, from time to time, by a Majority of the Board; provided, however, that, during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1.12 "**Declarant**" means THE BROHN GROUP, LLC, a Texas limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under the Documents to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under the Documents.

1.13 "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, in accordance with the terms of <u>Appendix A</u> of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is Recorded for a maximum period not to exceed one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant.

1.14 "Declaration" means this document, as it may be amended from time to time.

1.15 "**Development Period**" means the seven (7) year period, beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on <u>Appendix A</u>, attached hereto, including rights related to development,

construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

1.16 "**Documents**" mean, singly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as <u>Attachment 1</u>, the Certificate, Bylaws, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.17 "General Common Elements" mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on <u>Attachment 1</u>, attached hereto.

1.18 "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.19 "Landscape Services" mean the following services to be provided to each Occupied Unit: (a) mowing and edging all turf areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April; (b) applying fertilizer to the turf areas twice a year; (c) manually and mechanically controlling weeds in as required to maintain a manicured appearance; and (d) controlling fire ants in the turf areas with applications of "Logic" or approved equal in the spring and fall. Notwithstanding the foregoing, the Board will have the right to modify the Landscape Services provided hereunder from time to time.

1.20 "Limited Common Elements", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", "Limited Common Elements", and "Limited Common Areas" on <u>Attachment 1</u>, attached hereto and as provided in *Section 5.4* of this Declaration.

1.21 "Majority" means more than half.

1.22 "**Member**" means a member of the Association, each Member being an Owner of a Unit, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.23 "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit.

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1.24 "Occupied Unit" means a Unit in which a Building has been constructed and which has been conveyed to the initial non-homebuilder purchaser thereof.

1.25 "**Owner**" means a holder of Recorded fee simple title to a Unit. Declarant is the initial Owner of all Units. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.25 "**Person**" shall mean any individual or entity having the legal right to hold title to real property.

1.26 **"Plat and Plans**" means the plat and plans attached hereto as <u>Attachment 1</u>, as changed, modified, or amended in accordance with this Declaration.

1.27 **"Property**" means, collectively, that certain real property more particularly described on <u>Exhibit A</u>, attached hereto and incorporated herein by reference.

1.28 **"Recorded"** means recorded in the Official Public Records of Williamson County, Texas.

1.29 "**Regime**" means the Property, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established under this Declaration.

1.30 "**Resident**" means an occupant or tenant of a Unit, regardless of whether the Person owns the Unit.

1.31 "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant for the benefit of the Association and included within the Community Manual.

1.32 "Underwriting Lender" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie Mae), singularly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution.

1.33 **"Unit**" means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as <u>Attachment 1</u>, as further described in *Section 5.2* of this Declaration.

1.34 "**Yard Area**" means all yard areas within a Unit, including any yard areas within a Unit which are enclosed by a fence. In the event of any dispute concerning what constitutes the Yard Area of a Unit, the Board's determination of such area will be final, binding and conclusive.

ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. <u>Subject to Documents</u>. The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on <u>Appendix A</u>, attached hereto, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. Additional Property. Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of Owners representing at least two-thirds (2/3) of the ownership interests in the Property, or, during the Development Period, by Declarant as permitted in <u>Appendix A</u>. Such additional property may include, without limitation, all or any portion of that certain real property more particularly described on <u>Exhibit B</u>, attached hereto and incorporated herein by reference. Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

2.3. <u>Adjacent Land Use</u>. Declarant makes no representations of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.4. <u>Recorded Easements and Licenses</u>. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of Record, including those described in the attached <u>Attachment 2</u>, and any shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-Recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses such Owner's Unit and for which the Association does not have express responsibility.

2.5. <u>Common Elements</u>. The Common Elements of the Property consist of all of the Property, save and except the Units.

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2.5.1. <u>Ownership & Maintenance</u>. The designation of Common Elements is determined by this Declaration. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with its development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element.

2.5.2. <u>Acceptance</u>. By accepting an interest in or title to a Unit, each Owner is deemed: (i) to accept the Common Elements of the Property, and any Improvement thereon, in its then-existing condition; (ii) to acknowledge the authority of the Association, acting through its Board, for all decisions pertaining to the Common Elements; (iii) to acknowledge that transfer of a Common Element's title (if any) to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (iv) to acknowledge the continuity of maintenance of the Common Elements, regardless of changes in the Association's Board or management.

ARTICLE 3

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. **General.** In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this Article.

3.2. **Owner's Easement of Enjoyment**. Every Owner is granted a right and easement of enjoyment over the General Common Elements and to use of Improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Residents of his Unit, and is not entitled to use the General Common Elements.

3.3. **Owner's Maintenance Easement**. Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct an Improvement on such Owner's Unit, subject to the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry onto an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing Improvements on any Unit must be approved in advance and in writing by the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Elements and adjacent Units during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element or any Improvement located thereon in exercising the easement granted hereunder, the Owner will be required to restore the Unit, Common Element or Improvement to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period 6

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of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Unit.

All work requiring access to the Common Elements may only be performed by a Person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board:

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units:
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

Notwithstanding anything to the contrary stated herein, the provisions of this Section shall not apply to any construction performed by or on behalf of Declarant.

3.4. **Owner's Ingress/Egress Easement**. Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required for vehicular and pedestrian ingress to and egress from his Unit or the Limited Common Elements, if any, assigned thereto.

3.5. Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over each adjoining Unit and Common Element as needed for the common benefit of the Property, or for the benefit of Units in a Building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to try refrain from actions that interfere with the Association's maintenance and operation of the Property.

3.6. <u>Association's Access Easement</u>. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the following purposes: 7

- (i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.
- (ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (iii) To enforce the Documents, including without limitation, the architectural standards and use restrictions.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To respond to emergencies.
- (vi) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.7. <u>Utility Easement</u>. The Association and Declarant (during the Development Period) may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant (during the Development Period) and the Association may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not unreasonably interfere with the use of any Unit for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

3.8. <u>Security</u>. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees,

agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts as his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.

3.9. **Injury to Person or Property**. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Limited Common Element, General Common Element, or other Improvement; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to person or property arising out of an accident or injury in or about the Regime to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance obtained by the Association at the time of such accident or injury.

3.10. Easement to Inspect and Right to Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Buildings and Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, the Association, any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the

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Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the purposes contained in this Section.

Parking. Declarant reserves the right to designate and assign portions of the 3.11. General Common Elements as parking for the exclusive use of any Owner of a Unit. Any parking spaces not specifically designated by the Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Association until such time as the Declarant no longer owns any Unit within the Regime. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board subject to any assignment previously made by the Declarant. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of the Declarant (or Association if Declarant no longer owns any Units within the Regime) which shall identify the parking space(s) and the Unit assigned thereto. The assignment shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the General Common Element so assigned, and may not be terminated or modified without the consent of the Declarant (or a majority of the Board if Declarant no longer owns any Units within the Regime) and the owner of the Unit to which such General Common Element parking was assigned. The Declarant or the Board may be required periodically to re-allocate parking to comply with the site plan approved by the applicable regulatory authority and applicable to the Property.

ARTICLE 4 <u>CERTAIN PROPERTY FEATURES</u>

4.1. **General**. This Article discloses selective features of the Regime that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

4.2. <u>Reservoir Area</u>. Portions of the Common Elements are restricted for use as a reservoir and spillway by virtue of perpetual easements for such purposes granted to the Upper Brushy Creek Water Control and Improvement District (collectively, the "Reservoir Area"). The Reservoir Area of the Common Elements is specifically identified on the Plats and Plans. Notwithstanding any provision to the contrary in this Declaration, the following restrictions apply to all Units that abut the Reservoir Area: (a) no trees may be located within the portion of the Yard Area located between the Building on the Unit and the boundary of the Unit adjacent to the Reservoir Area; and (b) no gates may be installed on the portion of the fence along the boundary of the Unit adjacent to the Reservoir Area.

4.3. <u>Service Contracts</u>. Declarant may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the individual Owners on a contract basis, such as intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments,

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which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

4.4. <u>Adjacent Thoroughfares</u>. The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

4.5. <u>Use of Adjacent PropertyOutside Conditions</u>. Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Resident may find objectionable, and it shall be the sole responsibility of an Owner or Resident to become acquainted with neighborhood conditions that could affect the Unit, including periodic entertainment, arts, sports, festivals and other events. <u>Street Names</u>. Declarant may change, in its sole discretion, the Property name and the street names and addresses in or within the Property including the street address of the Unit before or after closing if required by any applicable regulatory agency.

4.8. <u>Concrete</u>. Minor cracks in poured concrete are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete and settling.

4.9. <u>Construction Activities</u>. Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

4.10. <u>Moisture</u>. Improvements may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

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Water Runoff. The Property may be subject to erosion and/or flooding during 4.11. unusually intense or prolonged periods of rain. Water may pond on various portions of the Property having impervious surfaces.

Encroachments. Improvements may have been constructed on adjoining lands 4.12. that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by such any such encroachments.

4.13. **Budgets**. Any budgets are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

Light and Views. The natural light available to and views from a Unit can 4.14. change over time due to among other things, additional development and the removal or addition of landscaping. NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.

4.15. **Schools.** No representations are being made regarding which schools may now or in the future serve the Unit.

4.16. **<u>Plans.</u>** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Unit are merely approximations and do not necessarily reflect the actual as-built conditions of the same.

4.17. **<u>Upgrades</u>**. The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit and Improvements constructed thereon.

Location of Utilities. Declarant makes no representation as to the location of 4.18. mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.19. <u>Chemicals</u>. Each Building will contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a Person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep the Building clean, dry, well ventilated and free of contamination.

4.20. Marketing. Declarant's use of a sales center and/or model Units or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the Units and Improvements available for purchase. The Units and Improvements may not conform, except as herein noted, to any model Unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and {W0635323.2}

scale models of the project (collectively "**Promotional Aids**"). By acquiring title to a Unit, each Owner agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Regime or any Unit. Declarant retains the right to obtain and use photography of the Property (including the Units and all Improvements) for publication and advertising purposes.

4.21. <u>Streets Within the Property</u>. Streets adjacent to the Property are public streets and maintained by applicable governmental authorities. Streets within the Property are private and maintained by the Association.

4.21.1. <u>Private Streets</u>. Any private streets located within the Property are General Common Elements and are maintained and administered by the Association. The Association, acting through the Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of private streets, including but not limited to:

- (i) Identification of vehicles used by Owners and Residents and their guests.
- (ii) Designation of parking or no-parking areas.
- (iii) Limitations or prohibitions on curbside parking.
- (iv) Removal or prohibition of vehicles that violate applicable rules and regulations.
- (v) Fines for violations of applicable rules and regulations.

4.21.2. <u>Public Streets</u>. Public streets are not Common Elements, but may be maintained and/or regulated by the Association to the extent they are not maintained or regulated by the City or county. As to public streets, the Association, acting through the Board, is specifically authorized: (i) to accept from applicable governmental authorities any delegation of street-related duties; and (ii) to act as attorney in fact for the Owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets serving and adjacent to the Property.

ARTICLE 5

UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. <u>Initial Submitted Units and Maximum Number of Units</u>. The Regime initially consists of one hundred three (103) Units. During the Development Period, Declarant, as permitted in <u>Appendix A</u>, has reserved the right to create a total of three hundred (300) Units on the Property and additional property added to the Regime. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an

identifying number to each new Unit; (ii) reallocate the Common Interest Allocation (as defined below) among all Units then existing within the Regime; (iii) describe any Limited Common Elements; if any, created or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and Section 82.059(b) of the Texas Uniform Condominium Act. To add additional property to the Regime, Declarant will execute and Record a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon Recordation of the declaration of annexation of annexation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

5.2. <u>Units</u>.

5.2.1. <u>Unit Boundaries</u>. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as <u>Attachment 2</u>. The boundaries of each Unit are further described as follows:

- (i) Lower Boundary of the Unit: The horizontal plane corresponding to the highest point of the finished grade of the land within the Unit as described and defined on <u>Attachment 2</u>.
- (ii) Upper Boundary of the Unit: The horizontal plane parallel to and fifty feet (50') above the lower boundary of the Unit.
- (iii) Lateral Boundaries of the Unit: A plane located on each side of a Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit.

5.2.2. What Each Unit Includes. Each Unit includes the spaces and Improvements within the lower, upper, and lateral boundaries defined in *Section 5.2.1.* above, including without limitation the Building, the roof and foundation of the Building, landscaping, driveways, sidewalks, fences, yards, utility lines and meters and all other Improvements located within the Unit. In addition to the Building and the Improvements within the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Building or Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; plumbing, septic, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building or Unit exclusively.

Not a Typical Condominium Unit

Although a Unit resembles a platted lot: (i) a Unit does not include land; (ii) the conveyance of a Unit is not a metes and bounds conveyance of land; and (iii) the creation of a Unit does not constitute a subdivision of land. Instead, each Unit is the surface of a designated piece of land, and everything above the surface for 50 feet, and anything below the surface that serves or supports the above-surface Improvements.

5.2.3. <u>Building Size</u>. The space contained within the vertical and horizontal boundaries of the Unit is not related to the size of the Building. A Building may only occupy a portion of a Unit in a location approved in advance by the Architectural Reviewer.

5.3. Designation of Limited Common Elements. Portions of the Common Elements may be allocated as Limited Common Elements on the Plat and Plans, attached hereto as <u>Attachment 2</u>, by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation. Only to the extent they are not part of the Unit, any front porch, sidewalk or fenced yard space that is obviously intended for the sole and exclusive use of the Unit to which the area is appurtenant is deemed a Limited Common Element, whether or not the area is so designated on Plat and Plans. If the boundaries of an appurtenant area change, with the Board's approval, the altered boundaries of the appurtenant area are the boundaries of the Limited Common Element may be so allocated only pursuant to the provisions of the Act; provided, however, that Declarant reserves the right in <u>Appendix A</u> of this Declaration, to create and assign Limited Common Elements within the Property.

5.4. <u>Common Interest Allocation</u>. The percentage of interest in the Common Elements (the "Common Interest Allocation") allocated to each Unit is set forth on <u>Attachment</u> <u>3</u> and is assigned in accordance with a ratio of one (1) to the total number of Units. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units the reallocation will be effective on the date such amendment is Recorded.

5.5. <u>Common Expense Liabilities: Liability for Expenses of Landscape Services</u>. The percentage of liability for common expenses allocated to each Unit and levied pursuant to Article 6 is equivalent to the Common Interest Allocation assigned to the Unit. Each Occupied Unit shall be liable for an allocated share of the expenses associated with the Landscape Services in accordance with a ratio of one (1) to the total number of Occupied Units.

5.6. <u>Votes</u>. One (1) vote is allocated to each Unit. The one vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit. In other words, the one vote appurtenant to each Unit is uniform and equal to the vote appurtenant to every other Unit.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.1. <u>Purpose of Assessments</u>. The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. <u>Personal Obligation</u>. An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

6.3. <u>**Types of Assessments</u>**. There are six (6) types of Assessments: Regular, Landscape, Special, Utility, Individual, and Deficiency Assessments.</u>

6.4. <u>Regular Assessments</u>.

6.4.1. <u>Purpose of Regular Assessments</u>. Regular Assessments are used for common expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- (i) Maintenance, repair, and replacement, as necessary, of the Common Elements, and Improvements, equipment, signage, and property owned by the Association.
- (ii) Maintenance examination and report, as required by *Article 9*.
- (iii) Utilities billed to the Association.
- (iv) Pest control.

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- (v) Services obtained by the Association and available to all Units.
- (vi) Taxes on property owned by the Association and the Association's income taxes.
- (vii) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (viii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (ix) Insurance premiums and deductibles.
- (x) Contributions to the reserve funds.
- (xi) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

6.4.2. <u>Annual Budget-Regular</u>. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

6.4.3. <u>Basis of Regular Assessments</u>. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Unit will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

6.4.4. <u>Supplemental Increases</u>. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases are apportioned among the Units in the same manner as Regular Assessments.

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6.5. Landscape Assessments. In addition to Regular Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, the Board may levy one or more Landscape Assessments against the Owners of Occupied Units for the purpose of defraying, in whole or in part, expenses associated with performing the Landscape Services. The Landscape Assessments will be allocated uniformly against each Occupied Unit. Landscape Assessments do not require the approval of the Owners of Occupied Units. Each Occupied Unit will be liable for its allocated share of the expenses associated with the Landscape Services in accordance with the terms of Section 5.5 above. If the Board fails to determine the amount of Landscape Assessments for any year, or delays in doing so, Owners will continue to pay the Landscape Assessment as last determined. If, during the course of a year, the Board determines that Landscape Assessments are insufficient to cover the estimated expenses associated with the Landscape Services for the remainder of the year, the Board may increase Landscape Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

6.6. <u>Special Assessments</u>. In addition to Regular Assessments, Landscape Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments, the Board may levy one (1) or more Special Assessments against all Units for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by at least a Majority of the votes in the Association. Special Assessments are apportioned among the Units in the same manner as Regular Assessments.

6.7. <u>Utility Assessments</u>. This Section 6.7 applies to utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular Assessments, the Board may levy a Utility Assessment against each Unit. If the Units are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Units are not submetered, the Board may allocate the Association's utility charges among the Units by any conventional method for similar types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Units.

6.8. Individual Assessments. In addition to Regular Assessments, Landscape Assessments, Utility Assessments, Special Assessments, and Deficiency Assessments, the Board may levy an individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; fines for violations of the Documents; {W0635323.2} 18

transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; common expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Unit basis; and "pass through" expenses for services to Units provided through the Association and which are equitably paid by each Unit according to benefit received.

6.9. **Deficiency** Assessments. The Board may levy a Deficiency Assessment against all Units for the purpose of defraying, in whole or in part, the cost of repair or restoration for General Common Elements if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments are apportioned among the Units in the same manner as Regular Assessments.

6.10. Working Capital Fund. Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in the amount of Five Hundred and No/100 Dollars (\$500.00) will be paid by the transferee of the Unit to the Association for the Association's working capital fund. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Unit. Each working capital contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments or Landscape Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay operational expenses of the Association until the Declarant Control Period terminates.

6.11. **<u>Reserve Fund Contribution</u>**. Upon the transfer of a Unit from one Owner to a subsequent Owner (but excluding transfers from Declarant to the initial Owner), a fee in the amount of Five Hundred and No/100 Dollars (\$500.00) will be paid by the transferee of the Unit to the Association for the Association's replacement reserve funds. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any reserve fund assessment payable on the transfer of a Unit. Each reserve fund contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Assessments and are not refundable. Declarant may not use 19 {W0635323.2}

reserve fund fees collected hereunder to pay operational expenses until the Declarant Control Period terminates.

6.12. <u>Due Date</u>. Regular Assessments, Landscape Assessments and Utility Assessments are due on the first calendar day of each month or on such other date as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, or Deficiency Assessment is given.

6.13. <u>Reserve Funds</u>. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Elements.

6.14. **Declarant's Right to Inspect and Correct Accounts.** For a period of ten (10) years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control and Development Periods.

6.15. <u>Association's Right to Borrow Money</u>. The Association is granted the right to borrow money, subject to the consent of Owners representing at least a Majority of the votes in the Association and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

6.16. <u>Limitations of Interest</u>. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than

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the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those Assessments are paid in full.

6.17. <u>Audited Financial Statements</u>. The Association shall have an audited financial statement for the preceding full fiscal year of the Association prepared and made available in accordance with the requirements of the Act.

ARTICLE 7 ASSESSMENT LIEN

7.1. <u>Assessment Lien</u>. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

7.2. <u>Superiority of Assessment Lien</u>. The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction or acquisition of the original Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to a lien for construction of Improvements to the Unit, regardless of when Recorded or perfected. It is also superior to any Recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

7.3. <u>Effect of Mortgagee's Foreclosure</u>. Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

If you fail to pay Assessments to the Association, you may lose title to your Unit if the Association forecloses its assessment lien.

7.4. **Notice and Release of Notice**. The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its

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option, may cause a notice of the lien to be Recorded. If the debt is cured after a notice has been Recorded, the Association will record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

7.5. <u>Power of Sale</u>. By accepting an interest in or title to a Unit, and except as prohibited under Applicable Law, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. To the fullest extent permitted under Applicable Law, the Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

7.6. <u>Foreclosure of Lien</u>. The Assessment lien may be enforced by judicial or, to the fullest extent permitted under Applicable Law, non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 8

EFFECT OF NONPAYMENT OF ASSESSMENTS

8.1. **Generally**. An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Documents or Applicable Law.

8.2. <u>Interest</u>. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

8.3. **Late Fees**. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

8.4. <u>Collection Expenses</u>. The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

8.5. <u>Acceleration</u>. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

8.6. Suspension of Vote. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (Co-Owners of a Unit constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

8.7. Assignment of Rents. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of assessments to the Association. If a Unit's account become delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

8.8. <u>Money Judgment</u>. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

8.9. <u>Notice to Mortgagee</u>. The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of Assessments.

8.10. <u>Application of Payments</u>. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a

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delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, Landscape Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit Owner's account.

ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS

9.1. <u>Association Maintains</u>. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs and replaces, as a common expense, all General and Limited Common Elements, as well as any component of a Unit delegated to the Association by this Declaration (it being acknowledged that Landscape Services are not a common expense, and are instead defrayed through the levy of Landscape Assessments). A summary of the respective maintenance obligations of the Association and each Owner is attached hereto and incorporated herein by reference as <u>Attachment 6</u> (the "Maintenance Responsibility Chart"). Although the Maintenance Responsibility Chart is attached to this Declaration as <u>Attachment 6</u>, it may be amended, restated, and published as a separate instrument. Any amended or restated Maintenance Responsibility Chart must be: (i) reflected in the Association's annual budget and reserve funds; and (ii) Recorded.

9.2. Landscape Services.

9.2.1. <u>Generally</u>. The Association will cause the Landscape Services to be provided to each Occupied Unit, accordingly, the Association is hereby granted an easement over and across each Occupied Unit and any Yard Area allocated thereto to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services. Access hereunder to each Occupied Unit is limited to Monday through Saturday, from 7 a.m. until 6 p.m., and then only in conjunction with actual performance of Landscape Services. If the Association damages any Improvements located within an Occupied Unit or Yard Area in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

9.2.2. <u>Dates</u>. The Association or its designated landscape company may, from time to time, provide each Owner of an Occupied Unit with a schedule of dates on which the Landscape Services will be performed.

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9.2.3. <u>Irrigation</u>. Each Owner of an Occupied Unit will be required to water turf thoroughly after the application of fertilizer. Each Owner of an Occupied Unit is also responsible for irrigation and all costs associated therewith, including construction and maintenance of any and all irrigation facilities within the Owner's Occupied Unit (unless otherwise discharged by the Association), and must properly irrigate all Yard Area within such Owner's Occupied Unit. Unless otherwise expressly approved by the Board, the Landscape Services will not include irrigation or the repair and maintenance of irrigation facilities. Each Owner of an Occupied Unit will refrain from irrigating the Yard Area of his Occupied Unit during the performance of Landscape Services.

9.2.4. <u>Access</u>. Notwithstanding the foregoing, in the event for any reason the Association is unable to access an Occupied Unit's Yard Area, the Association will be relieved of its obligation hereunder to provide Landscape Services to such Occupied Unit's Yard Area until such time that the Association is able to access such Occupied Unit's Yard Area.

9.2.5. <u>Modifications to Scope</u>. Notwithstanding any provision herein to the contrary, the Board shall have the right, in its sole and absolute discretion, at any time and from time to time, to expand, contract or otherwise modify the scope and character of Landscape Services to be provided by the Association.

9.2.6. <u>Additional Landscape Services</u>. The Association shall be permitted, but not obligated, upon an Owner's request, to provide landscape-related services to the Owner's Yard Area in addition to those services provided as part of the Landscape Services. The expenses associated with such additional landscape-related services shall be charged to the Owner to whom the services are provided as an Individual Assessment.

9.3. <u>Owner's Obligations for Maintenance of Yard Area</u>. Each Owner shall be obligated to perform any and all landscape maintenance and services within the Owner's Yard Area to the extent not provided by the Association as part of the Landscape Services. Each Owner must also maintain any portions of the Yard Area not maintained by the Association as part of the Landscape Services, at the Owner's expense, at a level, to a standard, and with an appearance that is commensurate with the neighborhood, as determined by the Architectural Reviewer in its sole and absolute discretion.

9.4. Inspection Obligations.

9.4.1. <u>Contract for Services</u>. In addition to the Association's maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Regime.

9.4.2. <u>Schedule of Inspections</u>. Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as <u>Attachment 4</u>. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identity any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the members of the Association at the next meeting of the members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9.4.3. <u>Notice to Declarant</u>. During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

9.4.4. <u>Limitation</u>. The provisions of this Section shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.5. <u>Owner Responsibility</u>. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

9.5.1. To maintain, repair, and replace the Owner's Unit and all Improvements constructed therein or thereon, and any Limited Common Elements assigned exclusively to the Owner's Unit.

9.5.2. Except as otherwise provided herein, the maintenance of all landscaping located within the Owner's Unit or located within that portion of the General Common Elements which is parallel to the street facing any side of such Owner's Unit and between such Owner's Unit and a sidewalk, keeping same in a neat, clean, odorless, orderly, and attractive condition.

9.5.3. To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

9.5.4. To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.

9.5.5. To be responsible for the Owner's willful or negligent acts and those of the Owner or Resident's family, guests, tenants, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.6. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

9.7. <u>Warranty Claims</u>. If the Owner is the beneficiary of a warranty against defects of the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements.

9.8. <u>Owner's Default in Maintenance</u>. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

ARTICLE 10 ARCHITECTURAL COVENANTS AND CONTROL

10.1. **Purpose**. During the Development Period, the primary purpose of this Article is to reserve and preserve Declarant's right of architectural control. During the Development Period, the Declarant has the right to regulate every aspect of the exterior of the Property, including the exterior design, use and appearance of Units and Common Elements. After expiration or termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as Architectural Reviewer in accordance with *Section 10.3.3* below, the Association will have the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation.

10.2. <u>Architectural Reviewer</u>. The purposes of this Article shall be undertaken by the Architectural Reviewer. <u>Until termination of the Development Period</u>, the Architectural <u>Reviewer shall mean Declarant or its designee</u>. After termination of the Development Period, or Declarant's delegation to the Association of all or a portion of its reserved rights as

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Architectural Reviewer in accordance with *Section 10.3.3* below, the rights of the Architectural Reviewer, as applicable in the case of a partial delegation in accordance with *Section 10.3.3* below, will automatically be transferred to the Board or a committee appointed by the Board.

10.3. Architectural Control by Declarant.

10.3.1. <u>Declarant as Architectural Reviewer</u>. During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association nor the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this Article.

10.3.2. Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Units in its Development or in Declarant's other developments. Accordingly, each Owner agrees that, during the Development Period, no Improvements will be started or progressed or modified without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

10.3.3. <u>Delegation by Declarant</u>. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as Architectural Reviewer under this Article to an Architectural Control Committee appointed by the Board or a committee comprised of architects, engineers, or other Persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

UNTIL THE EXPIRATION OR TERMINATION OF THE DEVELOPMENT PERIOD, <u>ONLY THE DECLARANT</u> HAS THE AUTHORITY TO MAKE DECISIONS REGARDING ARCHITECTURAL CONTROL IN THE ASSOCIATION – INCLUDING ALL TASTE, DESIGN AND STANDARDS!

10.4. <u>Architectural Control by Association</u>. Upon Declarant's delegation, in writing, of all or a portion of its reserved rights as Architectural Reviewer to the Board, or upon the

termination of the Development Period, the Association will assume jurisdiction over architectural control and will have the powers of the Architectural Reviewer hereunder and the Board, or a committee appointed by the Board, is the Architectural Reviewer and shall exercise all architectural control over the Property.

10.5. Limits on Liability. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents will have any liability for decisions made as Architectural Reviewer in good faith, and which are not arbitrary or capricious. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Board; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and Applicable Law. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

10.6. **Prohibition of Construction, Alteration and Improvement**. Without the Architectural Reviewer's prior written approval, a Person may not commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property.

YOU CANNOT CHANGE THE EXTERIOR OF ANY IMPROVEMENTS WITHIN YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.

10.7. **No Deemed or Verbal Approval**. Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing - negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural Architectural Reviewer approval of an architectural change approval be Recorded. automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval.

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10.8. **Application**. To request Architectural Reviewer approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

10.9. <u>**Owner's Duties.</u>** If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the Improvement, provided:</u>

10.9.1. The Owner complies with Section 3.3.

10.9.2. The Owner must adhere strictly to the plans and specifications approved by the Architectural Reviewer.

10.9.3. The Owner must initiate and complete the Improvement in a timely manner.

10.9.4. If the approved application is for work that requires a building permit from a governmental authority, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with Applicable Law. In addition, approval or plans and specifications by a governmental authority does not ensure Architectural Reviewer approval.

ARTICLE 11 USE RESTRICTIONS

11.1. <u>Variance</u>. The use of the Regime is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Article. The Board, with the Declarant's written consent during the Development Period, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by a Majority of the Board. The grant of a variance shall not constitute a waiver or estoppel of the Association's right to deny a variance in other circumstances.

11.2. <u>Association's Right to Promulgate Rules and Amend Community Manual</u>. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce

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reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

11.3. <u>**Rules and Regulations**</u>. In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

11.3.1. Use of Common Elements.

11.3.2. Hazardous, illegal, or annoying materials or activities on the Property.

11.3.3. The use of Property-wide services provided through the Association.

11.3.4. The consumption of utilities billed to the Association.

11.3.5. The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.

11.3.6. The occupancy and leasing of Units.

11.3.7. Animals.

11.3.8. Vehicles.

11.3.9. Disposition of trash and control of vermin, termites, and pests.

11.3.10. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

11.4. <u>Animals</u>. No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy quotas, no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, may be maintained in each Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

11.5. <u>Annoyance</u>. No Unit or Limited Common Element may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the

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desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Units; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

11.6. **Appearance**. Both the exterior and the interior of the Improvements constructed within a Unit must be maintained in a manner so as not be unsightly when viewed from the street, Common Elements, or neighboring Units. The Board will be the arbitrator of acceptable appearance standards.

11.7. <u>Declarant Privileges</u>. In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in <u>Appendix A</u> of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a Use Restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

11.8. **Drainage**. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

11.9. **Driveways**. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

11.10. **Garages**. The original garage area of any Building or Improvement constructed within a Unit may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the Board's written authorization.

11.11. **Landscaping.** No person may perform landscaping, planting, or gardening anywhere within the Common Elements without the Board's prior written authorization.

11.12. <u>Noise And Odor</u>. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Units. The Rules may limit, discourage, or prohibit noise-producing activities and items in the Units and on the Common Element.

11.13. <u>Occupancy</u>. The Board may adopt Rules regarding the occupancy of Units. If the Rules fail to establish occupancy standards, no more than two (2) persons per bedroom may occupy a Unit, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Unit*) permitted by the U.S. Department of Housing and Urban Development. A person may not occupy a Unit of the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial physical damage to the property of others.

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

11.14. <u>Residential Use</u>. The use of a Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a dwelling; (ii) the uses conform to applicable governmental ordinances; (iii) there is no external evidence of the uses; (iv) the uses do not entail visits to the Unit by employees or the public; and (v) the uses do not interfere with Residents' use and enjoyment of neighboring Units. Other than the air conditioned part of a Unit, no thing or structure on the Property may be occupied as residence at any time by any person. This provision applies, without limitation, to the garage.

11.15. **Signs.** Unless prohibited by Applicable Law, no sign of any kind, including signs (including signs advertising Units for sale, for rent or for lease), may be erected, placed, or permitted to remain on the Property or unless written approval has been obtained in advance from the Board. The Board may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Association may effect the immediate removal of any sign or object which has not been approved in advance by the Board or otherwise violates the Documents or any sign guidelines promulgated by the Board, or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal. Notwithstanding anything to the contrary stated herein, during the Development Period, the Declarant, and not the Board, must approve all signs.

11.16. <u>Antenna</u>. Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc (collectively, an "Antenna/Dish"), shall be erected, maintained, or placed on a Unit without the prior written approval of the Board.

11.16.1. <u>Dishes Over One Meter Prohibited</u>. Unless otherwise approved by the Board, an Antenna/Dish which is over one (1) meter in diameter is prohibited within the Regime.

11.16.2.<u>Notification</u>. An Owner or Resident who wishes to install an Antenna/Dish one (1) meter or less in diameter (a "**Permitted Antenna**") must submit a written notice to the Board or its designee, which notice must include the Owner or Resident's installation plans for the satellite dish.

11.16.3.<u>One Dish Limitation</u>. Unless otherwise approved by the Board, only one (1) Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Board or its designee. Upon notification, the Owner will be permitted to install an additional Permitted

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Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

11.16.4. Permitted Installation Locations – Generally. An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Resident has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Unit.

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Residents of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or occupant of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Board of Directors may determine what constitutes a nuisance to the Association. The Board may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

11.16.5. <u>Preferred Installation Locations</u>. A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Board are as follows:

- (i) Attached to the back of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; then
- (ii) attached to the side of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

11.17. <u>Vehicles</u>. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, repairs, or restorations of vehicles on the

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Property. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

11.18. <u>Balconies and Patios</u>. No articles other than Board-approved patio-type furniture and suitable plants shall be placed on any patios or outside balconies. No linens, cloths, clothing, towels, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, or other articles, shall be stored, shaken or hung from or on any of the windows, doors, patios or balconies or other portions of the Regime. The Board will have the authority to require an Owner or Resident to remove any article from a window, door, terrace, balcony, or deck, if in the sole and exclusive discretion of the Board, the article is unsightly, offensive, or constitutes an annoyance.

11.19. Wireless Internet Systems. A wireless Internet communication network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Regime, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

ARTICLE 12 UNIT LEASING

12.1. Lease Conditions. The leasing of Units is subject to the following conditions, which shall apply except to the extent otherwise approved in writing by the Board: (i) no Unit may be rented for transient or hotel purposes or for a period less than twelve (12) months; (ii) no Unit may be subdivided for rent purposes, and not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents; (iv) an Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents and Applicable Law.

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12.2. <u>Owner Occupancy</u>. For purposes of this Article, a Unit is considered "Owner occupied" if at least one Resident of an Occupied Unit is an Owner of the Unit or is related by blood, marriage, or adoption to an Owner of the Unit, or if the Unit is vacant; provided, however, except that a Unit being offered for lease may not be considered "Owner occupied" even though the Unit is then-vacant or then-occupied by an Owner. In calculating occupancy, Units are counted uniformly regardless of size.

12.3. <u>Eviction of Tenants</u>. Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:

12.3.1. <u>Violation Constitutes Default</u>. Failure by the tenant or his invitees to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this Section.

12.3.2. <u>Association as Attorney-in-Fact</u>. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the Association, each Owner appoints the Association as his attorney-in-fact, with full authority to act in his place in all respects, solely for the purpose of enforcing the Documents against his tenants, including but not limited to the authority to institute forcible detainer proceedings against his tenant on his behalf, provided the Association gives the Owner at least ten (10) days' notice, by certified mail, of its intent to so enforce the Documents.

12.3.3. <u>Association Not Liable for Damages</u>. The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

12.4. <u>Exemption</u>. A Mortgagee that acquires title to the Unit by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the effect of this Article. During the Development Period, Declarant is exempt from the effect of this Article.

ARTICLE 13 ASSOCIATION OPERATIONS

13.1. **Board**. Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association.

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Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

13.2. The Association. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

13.3. <u>Name</u>. A name is not the defining feature of the Association. Although the initial name of the Association is the Edgewater Condominium Community, Inc., the Association may operate under any name that is approved by the Board and (i) filed with the Williamson County Clerk as an assumed name, or (ii) filed with the Secretary of State of Texas as the name of the filing entity. The Association may also change its name by amending the Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration.

13.4. **Duration**. The Association comes into existence on the earlier to occur of the following two events: (i) the date on which the Certificate is filed with the Secretary of State of Texas, or (ii) the date on which a Unit deed is Recorded in the Real Property Records of Williamson County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

13.5. **Governance**. Except during the Declarant Control Period, the Association will be governed by the Board elected by the Members. Unless the Bylaws or Certificate provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the votes in the Association, or at a meeting by Owners holding at least a Majority of the votes in the Association that are represented at the meeting.

13.6. <u>Merger</u>. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners holding at least two-thirds (2/3) of the votes in the Association. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and

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obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

13.7. <u>Membership</u>. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one (1) person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

13.8. Manager. The Board may delegate the performance of certain functions to one (1) or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as <u>Attachment 5</u>. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association, the Board, or the Association's Members, employees, and agents. The Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

13.9. **Books and Records**. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of the Texas Business Organizations Code.

13.10. **Indemnification**. The Association indemnifies every officer, director, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association may maintain general liability and director's and officers' liability insurance to fund this obligation.

13.11. **Obligations of Owners**. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

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13.11.1. <u>Information</u>. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address and phone number; (iii) any Mortgagee's name; (iv) the name and phone number of any Resident other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

13.11.2. <u>Pay Assessments</u>. Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments and Utility Assessments without demand by the Association.

13.11.3. <u>Compliance with Documents</u>. Each Owner will comply with the Documents as amended from time to time.

13.11.4. <u>Reimburse for Damages</u>. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

13.11.5. <u>Liability for Violations</u>. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

13.12. <u>Unit Resales</u>. This Section applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant:

13.12.1. <u>Resale Certificate</u>. An Owner intending to sell his Unit will notify the Association and will request a condominium resale certificate from the Association.

13.12.2. <u>No Right of First Refusal</u>. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.

13.12.3. <u>Other Transfer-Related Fees</u>. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees may be charged by the Association or by the

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Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees. This exclusion may be waived by a party to a conveyance who requests transfer-related services or documentation for which fees are charged.

13.12.4. Exclusions. The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (iv) a disposition by a government or governmental agency. Additionally, the requirements of this Section do not apply to the initial conveyance from Declarant.

ARTICLE 14 ENFORCING THE DOCUMENTS

Notice and Hearing. Before levying a fine for violation of the Documents (other 14.1. than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine -- unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of Applicable Law.

14.2. <u>**Remedies**</u>. The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following rights to enforce the Documents:

14.2.1. <u>Nuisance</u>. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.

14.2.2. <u>Fine</u>. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

14.2.3. <u>Suspension</u>. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

14.2.4. <u>Self-Help</u>. The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.

14.2.5. <u>Suit</u>. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

14.3. **Board Discretion**. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

14.4. <u>No Waiver</u>. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the

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Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

14.5. **Recovery of Costs**. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 15 INSURANCE

15.1. <u>General Provisions</u>. The broad purpose of this Article is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Units. Because the insurance requirements of mortgage underwriters are subject to change, as are State-promulgated insurance regulations and policies, this Article tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment. The Board will make every reasonable effort to comply with the requirements of this Article.

15.1.1. <u>Unavailability</u>. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

15.1.2. <u>No Coverage</u>. Even if the Association and the Owner have adequate amounts of recommended and required coverages, the Property may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Elements as a common expense, and the Owner is responsible for restoring the Owner's Unit at such Owner's sole expense.

15.1.3. <u>Requirements</u>. The cost of insurance coverages and bonds maintained by the Association is a common expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives

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its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the act or omission of any Owner or Resident who is not under the Association's control.

15.1.4. <u>Association as Trustee</u>. Each Owner irrevocably appoints the Association, acting through its Board, as such Owner's trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

15.1.5. <u>Notice of Cancellation or Modification</u>. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Eligible Mortgagees, and the insurer will give go Mortgagees, prior notices of cancellation, termination, expiration, or material modification.

15.1.6. <u>Deductibles</u>. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event of an insured loss, the deductible is treated as a common expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and hearing Section of this Declaration.

15.2. **Property Insurance.** The Association will obtain blanket all-risk insurance if reasonably available, for all Common Elements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction In event of damage or destruction from any insured hazard. The Federal National Mortgage Association recommends use of a guaranteed replacement cost endorsement, or a replacement cost endorsement, together with an agreed amount endorsement in case of coinsurance.

15.2.1. <u>Common Property Insured</u>. If insurable, the Association will insure: (i) General Common Elements; (ii) Limited Common Elements serving more than one (1) Unit, if any; and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

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15.2.2. Units Not Insured by Association. In no event will the Association maintain property insurance on any Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and Limited Common Element assigned exclusively to the Owner's Unit, including any betterments and Improvements installed within such Unit, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. In addition, the Association does not insure an Owner or Resident's personal property. <u>THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE ON HIS PERSONAL BELONGINGS.</u>

15.2.3. <u>Endorsements</u>. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender.

15.3. <u>Board to Make Policies Available</u>. The Board shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their individual insurance needs and each Owner shall have the right to obtain additional coverage at its own expense.

15.4. Form of Policies; Review of Policies. All policies of insurance shall be written with a company licensed to do business in the State of Texas. It shall be the duty of the Board at least once every year to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 82.111 of the Act and this Declaration. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association and satisfy the requirements of Section 82.111 of the Act and this Declaration.

15.5. <u>Liability Insurance</u>. The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Resident within his Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. The amount of coverage should be at least that required by an Underwriting Lender, to the extent reasonably available. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

15.6. <u>Worker's Compensation</u>. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses.

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15.7. **Fidelity Coverage**. The Association may maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

15.8. <u>Directors and Officers Liability</u>. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

15.9. <u>Mortgagee Required Policies</u>. Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for condominium developments as long as an Underwriting Lender is a Mortgagee or an Owner.

15.10. <u>Other Policies</u>. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

ARTICLE 16

RECONSTRUCTION OR REPAIR AFTER LOSS

16.1. <u>Subject to Act</u>. The Association's response to damage or destruction of the Property will be governed by Section 82.111(i) of the Act. The following provisions apply to the extent the Act is silent.

16.2. <u>Restoration Funds</u>. For purposes of this Article, "Restoration Funds" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Property. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Association directors or that of an agent duly authorized by the Board.

16.2.1. <u>Sufficient Proceeds</u>. If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Property, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

16.2.2. <u>Insufficient Proceeds</u>. If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.

16.2.3. <u>Surplus Funds</u>. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by such Owner, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing sentence will be common funds of the Association to be used as directed by the Board.

16.3. Costs and Plans.

16.3.1. <u>Cost Estimates</u>. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Property. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

16.3.2. <u>Plans and Specifications</u>. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Units will be repaired and restored substantially in accordance with original construction plans and specifications. Alternate plans and specifications for repair and restoration of Common Elements must be approved by Owners holding at least two-thirds of the votes in the Association and by certain Mortgagees if so required by Article 18 of this Declaration.

16.4. <u>Owner's Duty to Repair</u>. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of the Building and other Improvements constructed within the Owner's Unit, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof. Unless otherwise approved by the Architectural Reviewer, the Building and other Improvements must be repaired and restored substantially in accordance with original construction plans and specifications.

16.5. <u>Owner's Liability for Insurance Deductible</u>. If repair or restoration of Common Elements is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 17 TERMINATION AND CONDEMNATION

17.1. <u>Association as Trustee</u>. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

17.2. <u>Termination</u>. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and *Section 18.3* below.

17.3. <u>Condemnation</u>. The Association's response to condemnation of any part of the Property will be governed by Section 82.007 of the Act. On behalf of Owners, but without their consent, the Board may execute an amendment of this Declaration to reallocate allocated interests following condemnation and to describe the altered parameters of the Property. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by law, execute an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or Improvements.

ARTICLE 18 MORTGAGEE PROTECTION

18.1. <u>Introduction</u>. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. Some sections of this Article apply to Mortgagees, as defined in *Article 1*. Other sections apply to Eligible Mortgagees, as defined below.

18.1.1. <u>Known Mortgagees</u>. An Owner who mortgages his Unit will notify the Association, giving the complete name and address of his mortgagee and the loan number. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and mortgagees.

18.1.2. <u>Eligible Mortgagees</u>. "Eligible Mortgagee" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a Recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name

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and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Units subject to mortgages held by Eligible Mortgagees. For example, "51 percent of Eligible Mortgagees" means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees.

18.2. <u>Amendment</u>. This Article establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

18.3. <u>Termination</u>. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; and (iii) sixty-seven percent (67%) of Eligible Mortgagees.

18.4. **Implied Approval**. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within sixty (60) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

18.5. Other Mortgagee Rights.

18.5.1. <u>Inspection of Books</u>. The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.

18.5.2. <u>Financial Statements</u>. A Mortgagee may have an audited statement prepared at its own expense.

18.5.3. <u>Attendance at Meetings</u>. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

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18.5.4. <u>Right of First Refusal</u>. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

18.5.5. <u>Management Contract</u>. If professional management of the Association is required by this Article, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

18.6. <u>Insurance Policies</u>. If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of condominiums, the Association must try to obtain and maintain the required coverages, to the extent they are reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here.

18.7. <u>Notice of Actions</u>. The Association will use its best efforts to send timely written notice to Eligible Mortgagees of the following actions:

18.7.1. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit.

18.7.2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.

18.7.3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

18.7.4. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

18.7.5. Any proposed amendment of a material nature, as provided in this Article.

18.7.6. Any proposed termination of the condominium status of the Property.

18.8. <u>Amendments of a Material Nature</u>. A Document amendment of a material nature must be approved by owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Eligible Mortgagees. THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT PROVIDED IN <u>APPENDIX A</u> ATTACHED

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18.8.1. Voting rights.

18.8.2. Assessment liens or the priority of assessment liens.

18.8.3. Reductions in reserves for maintenance, repair, and replacement of Common Elements.

18.8.4. Responsibility for maintenance and repairs.

18.8.5. Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to <u>Appendix A</u>, by agreement between Owners (only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action).

18.8.6. Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action.

18.8.7. Convertibility of Units into Common Elements or Common Elements into Units.

18.8.8. Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.

18.8.9. Property or fidelity insurance requirements.

18.8.10.Imposition of any restrictions on the leasing of Units.

18.8.11.Imposition of any restrictions on Owners' right to sell or transfer their Units.

18.8.12.Restoration or repair of the Property, in a manner other than that specified in the Documents, after hazard damage or partial condemnation.

18.8.13.Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 19

AMENDMENTS

19.1. <u>Consents Required</u>. As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant acting alone, or by certain

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Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association.

19.2. <u>Amendments Generally</u>. For amendments requiring the consent of Eligible Mortgagees, the Association will send each Eligible Mortgagee a detailed description, if not the exact wording, of any proposed amendment. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and Recorded with such amendment. In addition, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected by the change in permissible use; or (ii) any license, easement or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of the Declarant.

19.3. <u>Effective</u>. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration; and (iii) Recorded.

19.4. Declarant Rights. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in <u>Appendix A</u>. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because <u>Appendix A</u> of this Declaration is destined to become obsolete, beginning seven (7) years after the date this Declaration is first recorded, the Board may restate, rerecord, or publish this Declaration without <u>Appendix A</u>. The automatic expiration and subsequent deletion of <u>Appendix A</u> does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

ARTICLE 20 DISPUTE RESOLUTION

20.1. <u>Introduction and Definitions</u>. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of

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litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

20.1.1. **"Claim**" means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, and including without limitation:

- (i) Claims relating to the rights and/or duties of Declarant, or its permitted assigns, under the Documents.
- (ii) Claims relating to the design or construction of the Property or any Improvement by Declarant, its permitted assigns, its contractor or subcontractors, or its designee.

20.1.2. "Claimant" means any Party having a Claim against any other Party.

20.1.3. "Exempt Claims" means the following claims or actions, which are exempt from this Article:

- (i) The Association's claim for Assessments and any action by the Association to collect Assessments.
- (ii) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- (iii) Any enforcement by the Association or the Declarant of the easements, architectural control, maintenance, and use restrictions of this Declaration; provided, however, that any enforcement action brought by the Association against the Declarant, or vice versa, is not an Exempt Claim hereunder.
- (iv) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

20.1.4. **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

20.2. <u>Mandatory Procedures</u>. Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied

with the procedures of this Article. As provided in *Section* 20.7 below, a Claim will be resolved by binding arbitration.

Notice. Claimant must notify Respondent in writing of the Claim (the "Notice"), 20.3. stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in Section 20.4 below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 20.4, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 20.4 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 20.5 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 20.5 is required without regard to the monetary amount of the Claim.

20.4. <u>Negotiation</u>. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

20.5. <u>Mediation</u>. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation in accordance with this *Section 20.5*.

20.6. <u>Termination of Mediation</u>. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator,

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the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

20.7. <u>Binding Arbitration-Claims</u>. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 20.7*. This section may not be amended without the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding at least seventy percent (70%) of the votes in the Association.

Governing Rules. If a Claim has not been resolved after Mediation as 20.7.1. required by Section 20.5, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 20.7 and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Williamson County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 20.7, this Section 20.7 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one (1) arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one (1) arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) one (1) arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

20.7.2. <u>Exceptions to Arbitration; Preservation of Remedies</u>. No provision of, nor the exercise of any rights under, this *Section* 20.7 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

20.7.3. <u>Statute of Limitations</u>. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section* 20.7.

20.7.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this Section 20.7; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the arbitrator shall make specific, written findings of fact and conclusions of In all arbitration proceedings in which the amount in controversy exceeds law. \$50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise In no event may an arbitrator award speculative, allowed by Applicable Law. consequential, or punitive damages for any Claim.

20.7.5. <u>Other Matters</u>. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Williamson County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal

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Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

20.8. <u>Allocation of Costs</u>. Except as otherwise provided in this Article, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

20.9. <u>General Provisions</u>. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. The Respondent and Claimant to any Exempt Claim may mutually agree to submit such Exempt Claim to the negotiation, mediation, and/or arbitration sections above.

20.10. Period of Limitation.

20.10.1. For Actions by an Owner or Resident of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Unit, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant conveyed the Unit to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Unit to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the Applicable Law governing the limitation period and period of repose shall apply to the Claim.

20.10.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors,

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including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, <u>provided</u>, <u>however</u>, that in no event shall the limitation period exceed four (4) years from the date Declarant substantially completed the Common Elements unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Declarant Control Period, unless the basis of the Claim was intentional fraud or willfull misconduct, in which case, the Applicable Law governing the limitation period and period and period of repose shall apply to the Claim.

20.11. <u>Approval & Settlement</u>. Notwithstanding any provision in this Article to the contrary, the initiation of binding arbitration as required by this Article is subject to the following conditions:

20.11.1.<u>Owner Acceptance</u>. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this *Section* 20.11 and *Article* 20.

20.11.2.<u>Owner Approval</u>. The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the votes in the Association, except that no such approval is required for the initiation of arbitration or litigation to resolve any Exempt Claim.

20.11.3.<u>Funding Arbitration and Litigation</u>. Except for Exempt Claims, the Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this *Article 20* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

20.11.4.<u>Settlement</u>. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate the settlement of arbitration and litigation, and may execute any document related thereto, such as settlement agreement and waiver or release of claims.

This *Section* 20.11 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding seventy percent (70%) of the votes in the Association.

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ARTICLE 21 GENERAL PROVISIONS

21.1. <u>Notices</u>. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association of created.

21.2. <u>Compliance</u>. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Law.

21.3. <u>Higher Authority</u>. The documents are subordinate to federal and State law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

21.4. <u>Interpretation</u>. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

21.5. <u>Duration</u>. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by Applicable Law.

21.6. <u>Captions</u>. In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

21.7. <u>Construction</u>. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control.

Declarant as Attorney in Fact and Proxy. To secure and facilitate Declarant's 21.8. exercise of the rights reserved by Declarant pursuant to <u>Appendix A</u> and elsewhere in this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit within the Regime, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit in the Regime, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to Appendix A or elsewhere in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage against a Unit in the Regime, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit in the Regime, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to <u>Appendix A</u> or elsewhere in this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to Appendix A or elsewhere in this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Business Organizations Code the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant pursuant to Appendix A or elsewhere in this Declaration on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-

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revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

21.9. <u>Exhibits/Attachments/Appendixes</u>. The following exhibits, attachments and appendixes are attached to this Declaration and are incorporated herein by reference:

Exhibit A	Property
Exhibit B	Additional Property
Attachment 1	Plat and Plans
Attachment 2	Encumbrances
Attachment 3	Common Interest Allocation
Attachment 4	Guide to Association's Examination of Common
	Elements
Attachment 5	Guide to Association's Major Management and
	Governance Functions
Attachment 6	Maintenance Responsibility Chart
Attachment 7	Tax Certificate
Appendix A	Declarant Reservations and Representations

[SIGNATURE PAGE FOLLOWS]

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

PROPERTY OWNER:

SPANISH CREEK DEVELOPMENT, INC.,

a Texas corporation

By:

Thomas A. Goebel, President

DECLARANT:

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THE BROHNGROUP, LLC, a Texas limited liability company

By:_ Adam B. Boenig, Managing Memł

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS Item 6.

THE STATE OF TEXAS § SCOUNTY OF TRAVIS §

This instrument was acknowledged before me on the 20 day of December, 2015, by Thomas A. Goebel, President of Spanish Creek Development, Inc., a Texas corporation, on behalf of said corporation.

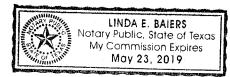
LINDA E. BAIERS otary Public, State of Texas (seal) My Commission Expires May 23, 2019

Notary Public Signature

THE STATE OF TEXAS § S COUNTY OF TRAVIS §

This instrument was acknowledged before me on the $\underbrace{30}^{-}$ day of December, 2015, by Adam B. Boenig, Managing Member of The Brohn Group, LLC, a Texas limited liability company, on behalf of said limited liability company.

(seal)



Notary Public Signature

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS Item 6.

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the liens created by the Warranty Deed with Vendor's Lien dated June 28, 2013, recorded under Document No. 2013061033, Official Public Records of Williamson County, Texas; the Deed of Trust (Security Agreement, Assignment of Leases, Assignment of Rents, and Financing Statement) dated June 28, 2013, recorded under Document No. 2013061034, Official Public Records of Williamson County, Texas; the Financing Statement dated June 28, 2013, recorded under Document No. 2013061035, Official Public Records of Williamson County, Texas; the Special Warranty Deed dated July 29, 2015, recorded under Document No. 2015067856, Official Public Records of Williamson County, Texas; and the Deed of Trust (Security Agreement, Assignment of Leases, Assignment of Rents, and Financing Statement) dated July 29, 2015, recorded under Document No. 2015067857, Official Public Records of Williamson County, Texas (collectively, the "Liens"); securing notes of even dates therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Liens to this Declaration, both on the condition that the Liens shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

COMMERCE NATIONAL BANK,

a branch of Lubbock National Bank, a Texas financial institution

By:

Mark E. Kalish, Senior Vice President

THE STATE OF TEXAS§COUNTY OF TRAVIS§

This instrument was acknowledged before me on this 25 day of December, 2016 by Mark E. Kalish, Senior Vice President of Commerce National Bank, a branch of Lubbock National Bank, a Texas financial institution, on behalf of said financial institution.

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(seal)

Stacy Thi Nguyen Notary Public State of Texas My Commission Expires May 24, 2018

Rublic, State of Texas Notary

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CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by the Second Lien Deed of Trust dated July 29, 2015, recorded under Document No. 2015067860, Official Public Records of Williamson County, Texas (the "Lien"), securing a note of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any Unit or the effect of the terms and provisions of this Regime.

SPANISH CREEK INVESTMENTS, LP, a Texas limited liability company

By: Goebel Management, LLC, a Texas limited liability company, its General Partner

Thomas A. Goebel, Manager

THE STATE OF TEXAS§COUNTY OF TRAVIS§

This instrument was acknowledged before me on the 3b day of December, 2015 by Thomas A. Goebel, Manager of Goebel Management, LLC, a Texas limited liability company, General Partner of Spanish Creek Investments, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

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Notary Public, State of Texas

LINDA E. BAIERS Notary Public, State of Texas My Commission Expires May 23, 2019

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(seal)

EXHIBIT A

PROPERTY

20.74 acres out of Lot 1, Block A, FINAL PLAT OF EDGEWATER, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded under Document No. 2015016045, Official Public Records of Williamson County, Texas.

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

Item 6.

<u>EXHIBIT B</u>

ADDITIONAL PROPERTY

The remainder of Lot 1, Block A, FINAL PLAT OF EDGEWATER, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded under Document No. 2015016045, Official Public Records of Williamson County, Texas.

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

PLAT AND PLANS

The plat and plans, attached hereto as <u>Attachment 1</u> contains the information required by the Texas Uniform Condominium Act.

Printed Name: Valerie Zurcher RPLS RPLS or License No.: 6222

BOUNDARIES OF UNIT

The legal boundaries of each Unit are established by the Declarant and the plat and plans attached hereto. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes.

SEE NEXT PAGE FOR ORIGINAL CERTIFICATION

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

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Item 6.

"ATTACHMENT-1"

EDGEWATER CONDOMINIUMS

PLATS AND PLANS CERTIFICATION OF SURVEYOR

THE ATTACHED PLAT AND PLANS, ATTACHED HERETO AS "ATTACHMENT-1" CONTAIN THE INFORMATION REQUIRED BY SECTION 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, AS APPLICABLE.

This 1/ the day of DECEMBER 2015 A.D.

Valerie Zurcher Z.P.L.S. Registered Professional Land Surveyor No. 6222 7800 Shoal Creek Blvd., Suite 200 West Austin, Texas 78757 (512) 454-8711





EK BLVD AUSTIN TEXAS 70757 PHONE: 512.454.8711 FAX: 512.450.8507

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DECEMBER 2015

SHEET 1 OF 13 50863-00 DESCRIPTION OF CONDOMINIUM PROPERTY:

20.74 ACRES BEING OUT OF LOT 1, BLOCK A, FINAL PLAT OF EDGEWATER, A CALLED 52.178 ACRE TRACT RECORDED IN DOC. NO. 2015016045 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SITUATED IN THE WILLIAM S. PARKER SURVEY, ABSTRACT No. 9 AND THE WASHINGTON ANDERSON SURVEY, ABSTRACT No. 15, IN THE CITY OF CEDAR PARK, WILLIAMSON COUNTY, TEXAS.

GENERAL NOTES:

1.) ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS, SAVE AND EXCEPT PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR "L.C.E." OR UNITS: (i) IN THE DECLARATION OF CONDOMINIUM REGIME FOR EDGEWATER CONDOMINIUMS, (THE "DECLARATION") OR (ii) ON THE PLATS AND PLANS OF THE REGIME.

2.) OWNERSHIP AND USE OF CONDOMINIUM UNITS IS SUBJECT TO THE RIGHTS AND RESTRICTIONS CONTAINED IN THE DECLARATION.

3.) EACH UNIT, BUILDING, LIMITED COMMON ELEMENT AND GENERAL COMMON ELEMENT IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT AS PROVIDED IN APPENDIX A" OF THE DECLARATION OF CONDOMINIUM REGIME FOR THE EDGEWATER CONDOMINIUMS. PURSUANT TO SUCH PROVISIONS, AMONG OTHER THINGS, DECLARANT HAS RESERVED THE RIGHT TO: (i) COMPLETE OR MAKE IMPROVEMENTS INDICATED ON THE PLAT AND PLANS; (ii) EXERCISE ANY DEVELOPMENT RIGHT PERMITTED BY THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION INCLUDING THE ADDITION OF REAL PROPERTY TO THE REGIME, WHICH PROPERTY MAY BE ADDED AS UNITS, GENERAL COMMON ELEMENTS AND/OR LIMITED COMMON ELEMENTS; (iii) MAKE THE PROPERTY PART OF A LARGER CONDOMINIUM OR PLANNED COMMUNITY; (iv) USE UNITS OWNED OR LEASED BY DECLARANT AS MODELS, STORAGE AREAS, AND OFFICES FOR THE MARKETING, MANAGEMENT, MAINTENANCE, CUSTOMER SERVICE, CONSTRUCTION, AND LEASING OF THE PROPERTY; AND (v) APPOINT OR REMOVE ANY DECLARANT-APPOINTED OFFICER OR DIRECTOR OF THE ASSOCIATION DURING THE DECLARANT CONTROL PERIOD (AS DESCRIBED IN THE DECLARATION) CONSISTENT WITH THE TEXAS UNIFORM CONDOMINIUM ACT. AS PROVIDED IN APPENDIX "A" OF THE DECLARATION, FOR PURPOSES OF PROMOTING IDENTIFYING, AND MARKETING THE PROPERTY, DECLARANT RESERVES AN EASEMENT AND RIGHT TO PLACE OR INSTALL SIGNS, BANNERS, FLAGS, DISPLAY LIGHTING, POTTED PLANTS, EXTERIOR DECORATIVE ITEMS, SEASONAL DECORATIONS, TEMPORARY WINDOW TREATMENTS, AND SEASONAL LANDSCAPING ON THE PROPERTY, INCLUDING ITEMS AND LOCATIONS THAT ARE PROHIBITED TO OTHER OWNERS AND RESIDENTS. DECLARANT RESERVES AN EASEMENT AND RIGHT TO MAINTAIN, RELOCATE, REPLACE, OR REMOVE THE SAME FROM TIME TO TIME WITHIN THE PROPERTY. AS PROVIDED IN APPENDIX "A" OF THE DECLARATION, DECLARANT HAS AN EASEMENT AND RIGHT OF INGRESS AND EGRESS IN AND THROUGH THE COMMON ELEMENTS (AS DEFINED IN THE DECLARATION) AND UNITS OWNED OR LEASED BY DECLARANT FOR PURPOSES OF CONSTRUCTING, MAINTAINING, MANAGING, AND MARKETING THE PROPERTY, AND FOR DISCHARGING DECLARANT'S OBLIGATIONS UNDER THE TEXAS UNIFORM CONDOMINIUM ACT AND THE DECLARATION.

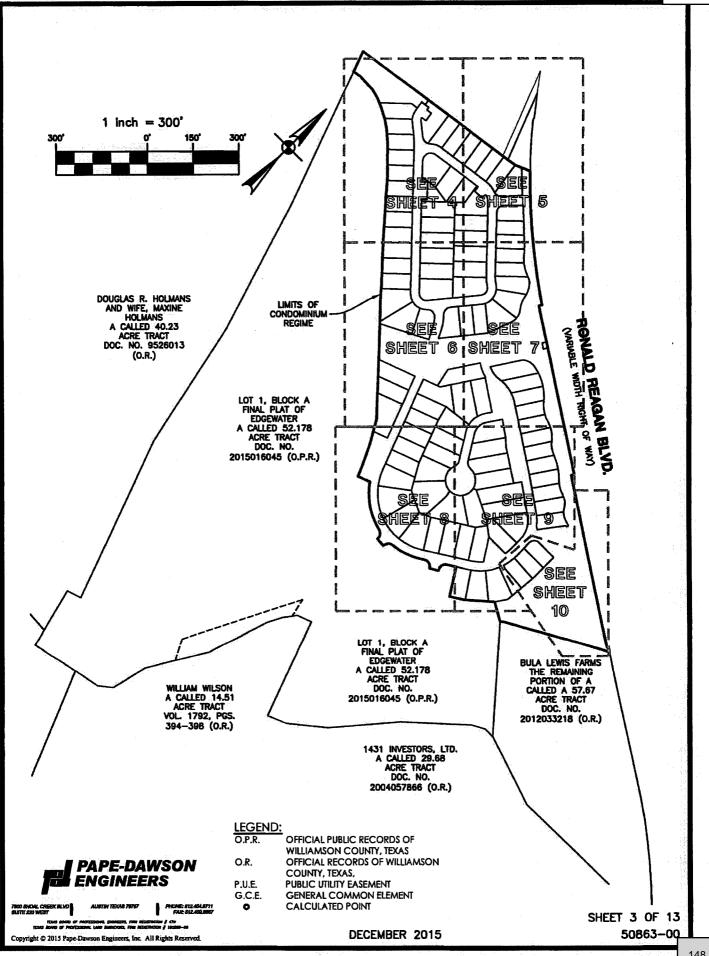
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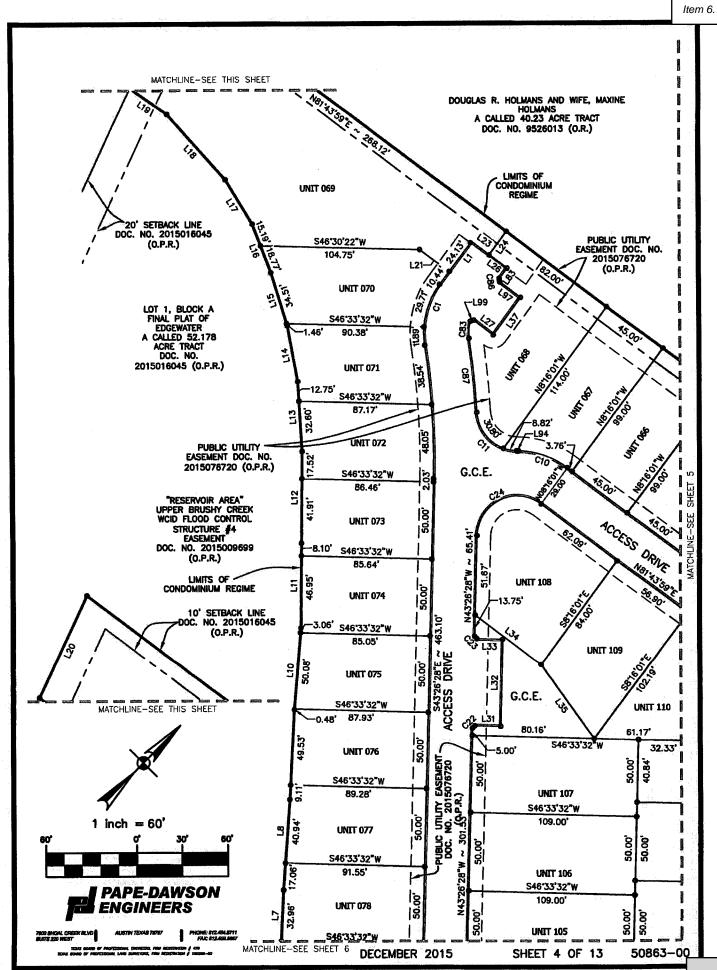
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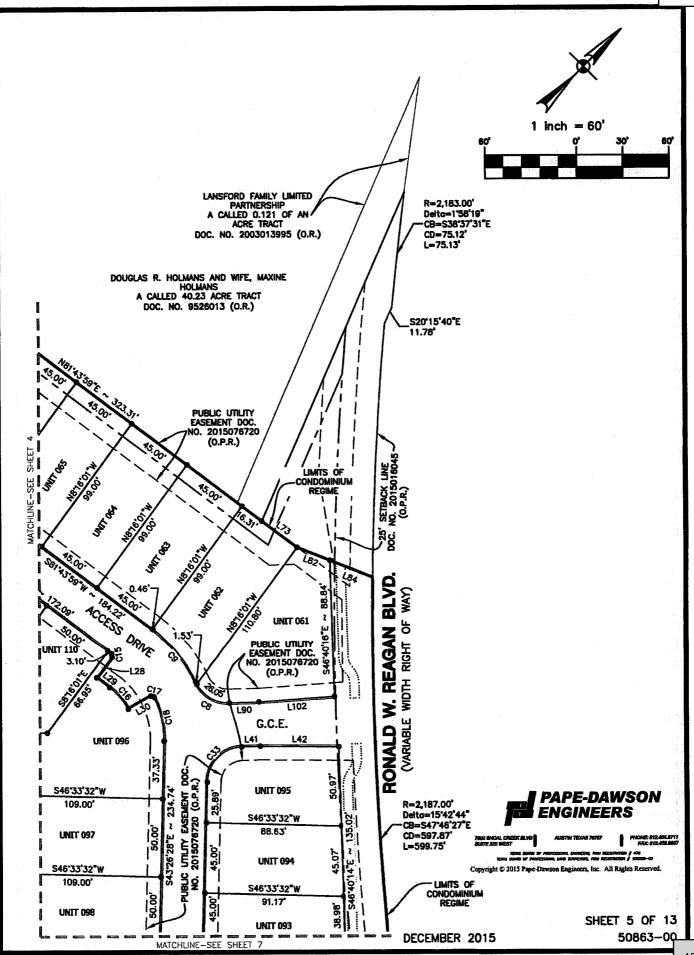
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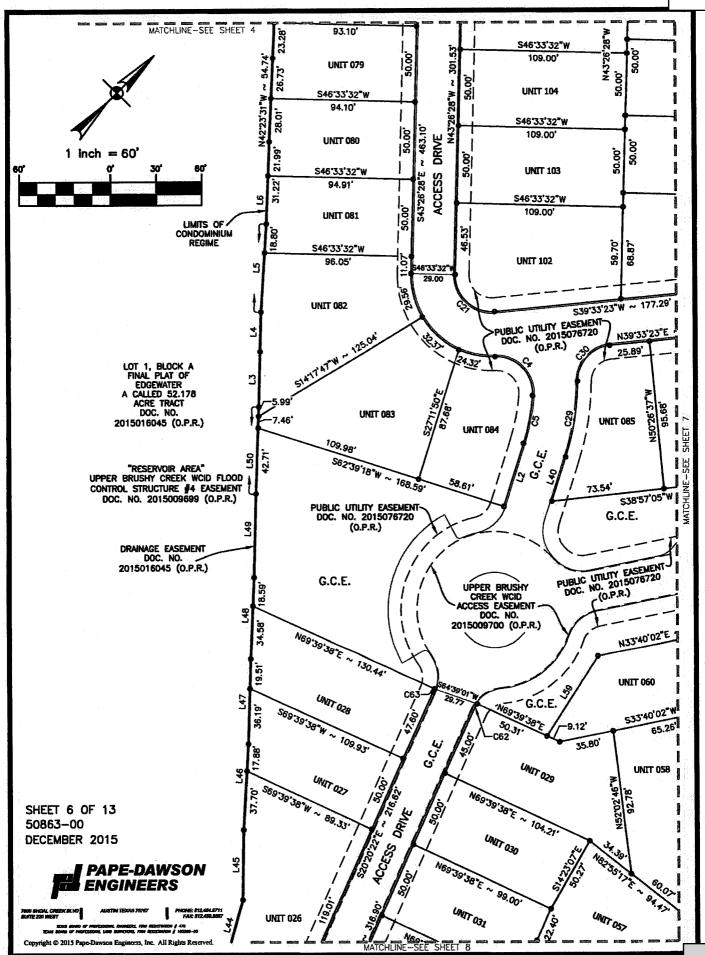


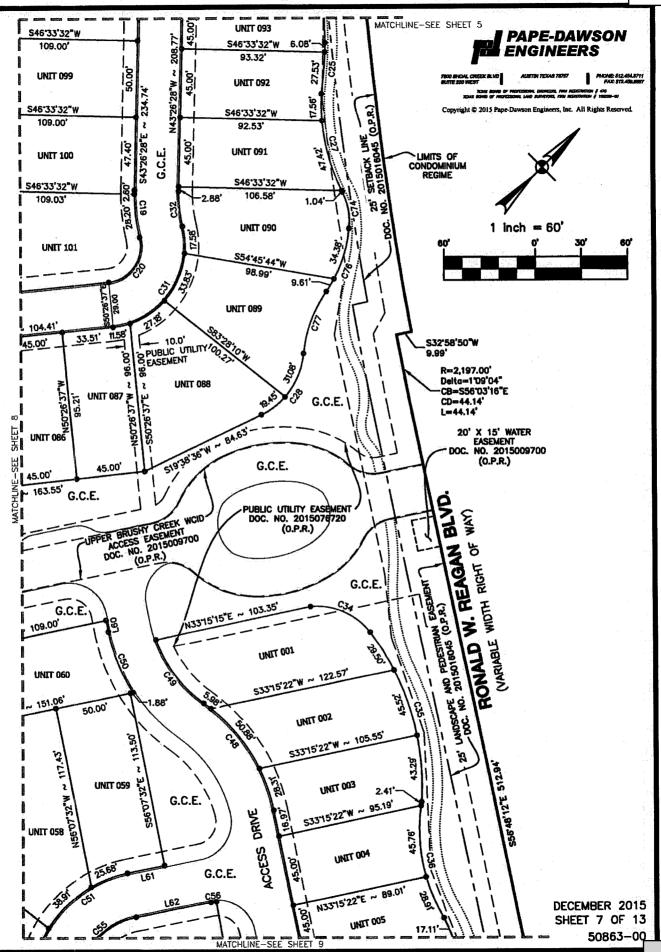
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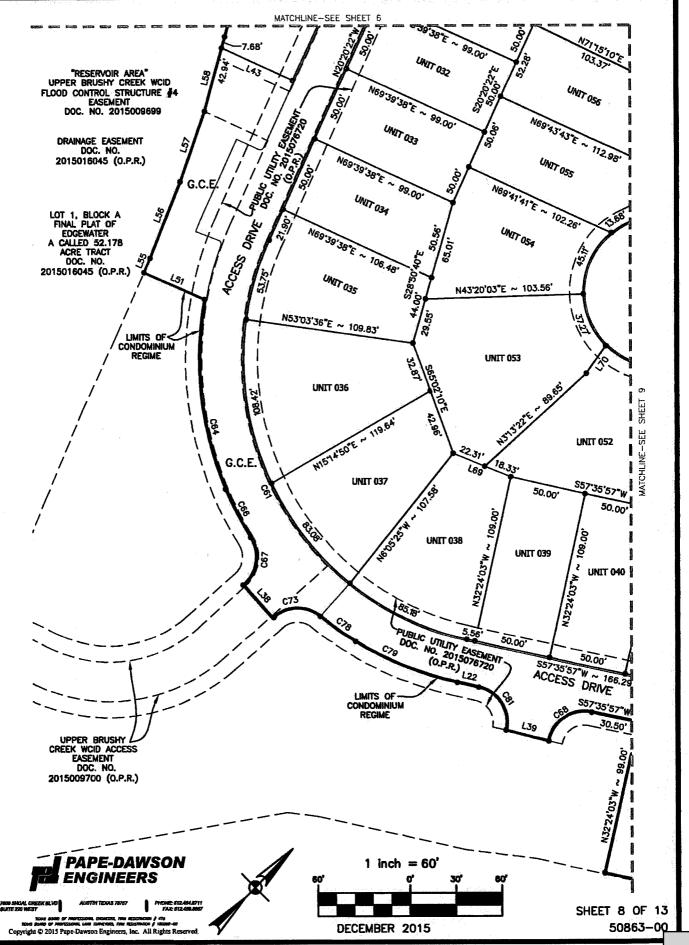


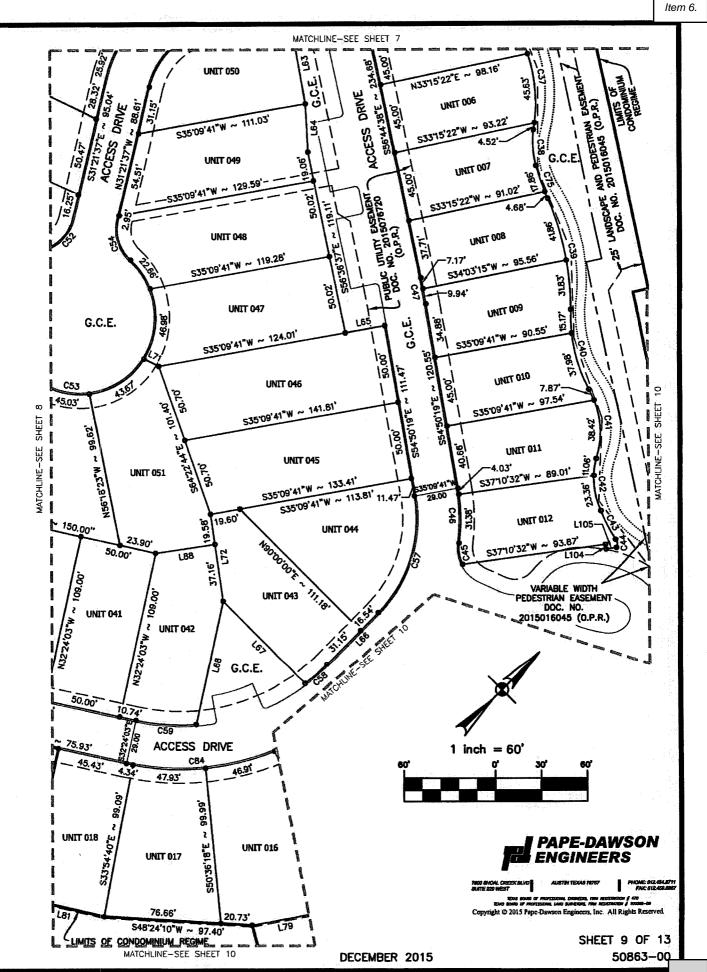


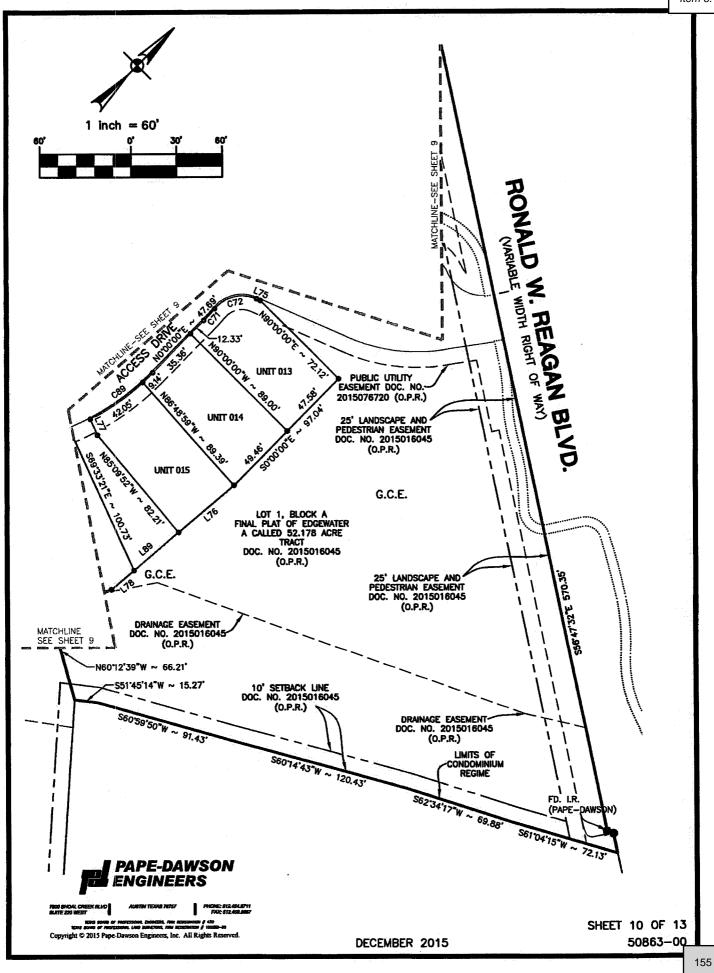




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	JNE TAI	
LINE #	LENGTH	BEARING
L1	34.57'	\$08'16'01"E
L2	42.71'	S27'11'50"E
L3	35.79'	N43"24'20"W
L4	25.61'	N43*24'20"W
L5	57.27'	N4173*50"W
L6	53.21'	N42'40'41"W
L7	56.25'	N4211'53"W
L8	58.00'	N40'36'47"W
L9	58.65'	N41'54'22"W
L10	53.62'	N40'08'49"W
L11	55.05'	N44'22'32"W
L12	59.43'	N44°22'48"₩
L13	45.35'	N48'21'32"W
L14 36.74' N55		N55'36'57"W
L15 35.97' I		N62"19'39"W
L16 33.96' N66'09'04"		N66'09'04"W
L17	33.69'	N76'02'32"W
L18	57.09'	N86'53'29"W
L19	29.62'	\$80'09'26"W
L20	73.72'	N19'34'39"W
L21	23.97'	S81'43'59"W
L22	14.37'	\$57'35'57 " W
L23	14.50'	\$81'43'59"W
L24	19.00'	N08"16"01"W
L26	14.50'	S81'43'59"W

LINE TABLE			
LINE #	BEARING		
L27	15.88'	N81*43'59"E	
L28	17.00'	S08"16'01"E	
L29	10.63'	N81"43'59"E	
L30	16.95'	N15'15'55"E	
L31	17.00'	N46'33'32"E	
L32	57.00'	N43"26'28"W	
L33	17.00'	\$46'33'32"W	
L34	53.99'	S81'43'59"W	
L35	59.74'	NB0'32'24"W	
L36	15.88'	N81'43'59"E	
L37	30.00'	N08'16'01"W	
L38	29.02'	S86'28'31"E	
L39	29.04	N59'34'22"E	
L40	29.89'	N27'11'50"W	
L41	12.41'	N43'19'44"E	
L42	51.20'	N45'37'10"E	
L43	51. 03'	S69*46'21"W	
L44	35.75'	N29'00'50"W	
L45	44.65'	N44'05'45"W	
L46	55.59'	N41*35'18"W	
L47	55.71'	N43"17'07"W	
L48	53.17	N42°28'37"W	
L49	54.11'	N43'22'56"W	
L50	56.16'	N42'50'12"W	
L51	43.35'	N68'54'27"E	

LINE TABLE			
LINE #	LENGTH	BEARING	
L53	48.05'	N25'29'36"W	
L54	50.61'	N29'49'08"W	
L55	10.25'	S21'05'33"E	
L56	53.12'	S23"15'09"E	
L57	48.05'	S25'29'36"E	
L58	50.61	N29'49'08"W	
L59	62.11	N1217'17"W	
L60	7.61'	S56'19'58"E	
L61 🧋	24.77	S33'52'28"W	
L62	49.92'	N33'52'28"E	
L63	59.87'	S54'50'19"E	
L64	31.18'	\$47'56'28"E	
L65	26.21'	N35'09'41"E	
L66	47.69'	S00'00'00"E	
L67	75.72'	N90'00'00"W	
L68	82.44'	S32'24'03"E	
L69	40.64'	N67'01'12"E	
L70	21.82'	N09*48'13"W	
L71	10.73'	\$71'23'48"W	
L72	56.73'	S5312'50"E	
L73	28.69'	NB1*43'59"E	
L75	2.59'	N68'51'45"E	
L76	47.32'	\$05'10'56"W	
L77	11.1B'	N69'33'21"W	
L78	19.44'	\$05'10'56"W	

LINE #	LENGTH	BEARING		
L79	42.59'	S34*26'51"W		
L81	52.37'	\$57 ' 35'57"₩		
L82	23.03'	N66'26'15"E		
L83	8.50'	N08"16"01"W		
L84	30.03'	N66'26'15"E		
L88	39.37'	N36'47'10"E		
L89	38.54	N04*50'08"E		
L90	19.56'	54319'44"W		
L94	1.21'	S46'02'45"W		
L97	17.00'	S81'43'59"W		
L99	2.43'	N27'33'18"E		
L102	49.45'	S41'02'18"W		
L104	3.03'	N52'39'51"W		
L105	6.57'	S3678'18"W		



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CURVE TABLE					
CURVE #	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C1	52.50'	045*23'34"	S30'57'48"E	40.51'	41.59'
C2	485.50'	01013'08"	S48'33'02"E	86.48'	86.59'
C3	52.50'	094'08'17"	S89'29'24"W	76.88'	86.26'
C4 .	23.50'	097'04'40"	\$89°02'25"E	35.22'	39.82'
C5	135.50'	013'18'15"	S33'50'57"E	31.39'	31.46'
C8	23.50'	067"14'51"	S76'57'09"W	26.03'	27.58'
C9	89.50'	028'50'36"	N83'50'43"W	44.58'	45.06'
C10	55.50'	035*41'14"	N63°53'22"E	34.01'	34.57'
C11	26.50	085'39'13"	S88'52'22"W	36.03'	39.62'
C15	1.50'	090'00'00"	553'16'01"E	2.12	2.36'
C16	42.00'	025'34'44"	S85'28'39"E	18.59'	18.75'
C17	1.50'	092'54'53"	N61*43'21"E	2.17'	2.43'
C18	60.50'	028'22'45"	S57'37'50"E	29.66'	29.97'
C19	114.50	015*24*44"	S51'08'50"E	30.71'	30.80
C20	23.50'	098'24'35"	S09'38'54"E	35.58'	40.36'
C21	23.50	097'00'09"	S88'03'28"W	35.20'	39.79'
C22	1.50'	090.00.00	N01'33'32"E	2.12	2.36'
C23	1.50'	090.00,00.	N88"26'28"W	2.12'	2.36'
C24	26.50'	125'10'26"	N19'08'45"E	47.05'	57.89'
C25	332.53'	005'47'29"	540'41'52"E	33.60'	33.61'
C27	125.66'	030'06'04"	N57'00'55"W	55.26'	66.02'
C28	49.00'	059'05'05"	S09'53'57"E	48.32'	50.53'
C29	164.50'	01718'49"	N35'51'14"W	49.52	49.71'
C30	23.50'	084'04'02"	N02"28'38"W	31.47'	34.48'
C31	52.50'	098'24'35"	N09'38'54"W	79.49'	90.17'
C32	85.50'	015'24'44"	N51'08'50"W	22.93'	23.00*
C33	23.50'	086'46'12"	N00'03'22"W	32.28	35.59'
C34	44.70'	056'36'55"	N68'01'19"E	42.39'	44.16'
C35	165.42'	040'58'37"	S61'42'22"E	115.80'	118.31
C36	108.53	040'39'31"	S55'54'40"E	75.48'	77.08'
C37	105.08'	036'40'21"	\$53*55'24°E	66.12'	67.26'
C38	59.06'	022"42'15"	\$49'20'12"E	23.25'	23.40'
C39	180.83'	023"21'00"	S56'30'27"E	73.19'	73.70'
C40	97.92'	031'05'59"	S57*49'53"E	52.50'	53.15'
C41	55.98'	047'22'25"	S50'44'24"E	44.98'	46.29'
C42	53.47'	036*52'46"	S49'46'44"E	33.83'	34.42'
C43	102.83'	011*29'12*	S71"33'13"E	20.58	20.62
C44	4.74'	068'00'16"	S50"24'49"E	5.31'	5.63'
C45	23.50'	034*41'59"	S54'28'15"E	14.02'	14.23'
C46	114.50'	017*43'03"	S45'58'48"E	35.27'	35.41'

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	CURVE TABLE				
CURVE #	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C47	514.50'	001*54'19"	S55*47'29"E	17.11'	17.11
C48	114.50'	042"36'59"	S78'03'08"E	83.21'	85.16'
C49	85.50°	035'29'41"	N81*36'47"W	52.12'	52.97'
C50	114.50'	021'43'54"	S67'11'55"E	43.17'	43.43'
C51	79.50'	065'14'06"	S01"15'25"W	85.71	90.52'
C52	26.50	052'45'08"	S04*59'03*E	23.55	24.40'
C53	49.50'	294 28 43	N54'09'09"E	53.57'	254.41'
C54	26.50'	061'43'35"	N62'13'25"W	27.19'	28.55'
C55	50.50'	065"14'06"	N01"15'25"E	54.44'	57.50'
C56	23.50'	008'36'59"	N3810'58"E	3.53'	3.53'
C57	85.50'	054*50'19"	N27"25'10"W	78.75'	81.83'
C58	135.50'	007'59'45"	S03'59'53"W	18.89'	18.91'
C59	135.50'	016'50'41"	S49'10'37"W	39.69'	39.84
C60	185.50'	102'03'41"	S71'22'13"E	288.45'	330.43'
C61	185.50	102'03'41"	N71'22'13"W	288.45'	330.43'
C62	23.50'	012'17'04"	N14'11'50"W	5.03'	5.04'
C63	23.50'	005*51'39"	S2316'12"E	2.40'	2.40'
C64	214.50'	042*45'54"	S55*54'19"E	156.41'	160.10'
C66	214.50'	042'45'54"	N55'54'19"W	156.41'	160.10'
C67	23.50'	08315'05"	N35'39'44"W	31.22	34.15'
C68	23.50'	092"26"20"	N11'22'47"E	33.93'	37.91'
C69	164.50'	034"32'31"	S4019'42"W	97.68'	99.17'
C70	164.50'	017'49'51"	S08'54'56"W	50.99'	51.19'
C7 1	114.50'	005'09'14"	N02'34'37"W	10.30'	10.30'
C72	23.50'	074'00'59"	S31'51'15"W	28.29	30.36'
C73	23.55'	080'37'12"	S43'55'52"W	30.47'	33.13'
C74	40.11'	034'35'54"	S55"21'02"E	23.86'	24.22'
C75	143.30'	009'00'49"	S65'11'44"E	22.52'	22.54'
C76	82.74'	030'27'50"	N24'31'53"W	43.47	43.99'
C77	82.03'	030'08'29"	S24"22'13"E	42.66*	43.15'
C78	220.73'	007*22*08"	S80'32'43"W	28.37'	28.39
C79	214.50'	019'09'16"	S67'10'35"W	71.38'	71.71
C81	23.50'	090.00.00.	N77*24'03"W	33.23'	36.91'
Ć83	23.50'	027*02'12*	N40'08'30"W	10.99'	11.09'
C84	164.50'	034*32'31*	S4019'42"W	97.68'	99.17
C86	1.50'	090.00,00,	S53'16'01"E	2.12'	2.36'
C87	514.50	005'21'34"	S50'58'49"E	48.11'	48.13'
C89	164.50'	017*49'51"	S08'54'56"W	50.99'	51.19'



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ENCUMBRANCES

- 1. The restrictive covenants of recorded in Document No. 2015016045 and Document No. 2015009160, Official Public Records of Williamson County, Texas.
- 2. Any and all easements and/or building setback lines as set out on plat recorded in Document No. 2015016045, Official Public Records of Williamson County, Texas.
- 3. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Brushy Creek Water Control and Improvement District No. 1
Purpose:	As provided in said instrument
Recording Date:	June 5, 1959
Recording No:	Volume 430, Page 693, Deed Records of Williamson County, Texas, and
	as affected by Partial Release recorded in Document No. 2015009698,
	Official Public Records of Williamson County, Texas

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Upper Brushy Creek Water Control and Improvement District
Purpose:	As provided in said instrument
Recording Date:	February 9, 2015
Recording No:	Document No. 2015009699, Official Public Records of Williamson
	County, Texas

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Upper Brushy Creek Water Control and Improvement District
Purpose:	As provided in said instrument
Recording Date:	February 9, 2015
Recording No:	Document No. 2015009700, Official Public Records of Williamson
	County, Texas

6. Matters contained in that certain document:

Entitled:	Agreement
Recording Date:	October 27, 1971
Recording No:	Volume 541, Page 292, Deed Records of Williamson County, Texas

- 7. Easements and matters contained in that certain document:
 - Entitled:Declaration of Easements and Restrictive Covenants Regarding the
Maintenance of Common AreaDated:February 5, 2015Executed by:Spanish Creek Investments, LPRecording Date:February 5, 2015Recording No:Document No. 2015009160, Official Public Records of Williamson
County, Texas
- 8. Easements and matters contained in that certain document:
 - Entitled: Declaration of Utility Easement
 - Executed by: Spanish Creek Development, Inc.

Recording Date: August 31, 2015

Recording No:

Document No. 2015076720, Official Public Records of Williamson County, Texas

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

COMMON INTEREST ALLOCATION

The Common Interest Allocation and percentage of liability for common expenses for each Unit is 1/103. Each Unit is allocated one (1) vote.

THE COMMON INTEREST ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL DECREASE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY THE DECLARANT.

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The examination is required by *Section 9.3* of the Declaration and is a necessary prerequisite to establishing sufficient reserves. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
 - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

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Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40% to 50% results in a 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section* 9.3 of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY HOA OFFICERS OR DIRECTORS	DELEGATED TO HOA EMPLOYEE OR AGENT
FINANCIAL MANAGEMENT		
Adopt annual budget and levy assessments, per Declaration.	Х	
Prepare annual operating budget, periodic operating statements, and year-end statement.		Х
Identify components of the property the HOA is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update same.		X
Collect assessments and maintain HOA accounts.		Х
Pay HOA's expenses and taxes.		x
Obtain annual audit and income tax filing.		X
Maintain fidelity bond on whomever handles HOA funds.		Х
Report annually to members on financial status of HOA.		х
PHYSICAL MANAGEMENT		
Inspect, maintain, repair, and replace, as needed, all components of the property for which the HOA has maintenance responsibility.		X

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY HOA OFFICERS OR DIRECTORS	DELEGATED TO HOA EMPLOYEE OR AGENT
Contract for services, as needed to operate or maintain the property.		Х
Prepare specifications and call for bids for major projects.		Х
Coordinate and supervise work on the property, as warranted.		X
ADMINISTRATIVE MANAGEMENT		
Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the HOA.		X
Conduct hearings with owners to resolve disputes or to enforce the governing documents.		Х
Obtain and supervise personnel and/or contracts needed to fulfill HOA's functions.		X
Schedule HOA meetings and give owners timely notice of same.		X
Schedule board meetings and give directors timely notice of same.		х
Enforce the governing documents.		Х
Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area.		x
Maintain HOA books, records, and files.		Х
Maintain HOA's corporate charter and registered agent & address.		X
OVERALL FUNCTIONS		
Promote harmonious relationships within the community.		X
Protect and enhance property values in the community.		X
Encourage compliance with governing documents and Applicable Laws and ordinances.		X

{W0635323.2}

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MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY HOA OFFICERS OR DIRECTORS	DELEGATED TO HOA EMPLOYEE OR AGENT
Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.		X
Protect the HOA and the property from loss and damage by lawsuit or otherwise.		Х

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

MAINTENANCE RESPONSIBILITY CHART

- "All aspects" includes maintenance, repair, and replacement, as needed.
- The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component.
- If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Control access gate at street entrance, if any.	All aspects.	None.
Water detention pond, if any.	All aspects.	None.
Fences, screening walls, and retaining walls around perimeter of property.	All aspects.	None.
Interior asphalt streets.	All aspects.	None.
Street lights.	All aspects.	None.
Sidewalks.	All aspects.	None
Mailboxes & exterior street addresses or Unit numbers.	All aspects if located outside of Unit.	All aspects if located within Unit.
Trash receptacles.	All aspects with respect to those serving the community as a whole.	Bags or individual wheeled cans, if used.

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

Landscaped areas.		
	General Common Elements.	All aspects, other than "Landscape Services" to be provided by the
	provided as set forth in Article 9 of the Declaration.	the Declaration.
Roofs.	None.	All aspects.
Gutters and downspouts.	None.	All aspects.
Roof-mounted attachments.	None.	All aspects.
Building exteriors.	None.	All aspects.
Building foundations, patio slabs and A/C slabs.	None.	All aspects.
Driveways serving individual Units.	None.	All aspects.
Exterior light fixtures on Buildings.	None.	All aspects.
Garages.	None.	All aspects.
Fireplaces & chimneys.	None.	All aspects.
Skylights, if any.	None.	All aspects.
Attics.	None.	All aspects.
Insulation & weatherstripping.	None.	All aspects.
Building interior, including Improvements, fixtures, partition walls and floors within Unit.	None.	All aspects.

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Sheetrock in Building (walls and ceilings) & treatments on	ASSOCIATION RESPONSIBILITY	UWNEK KESFUNJBILIT
walls.	None.	All aspects.
Exterior doors of Units.	None.	All aspects.
Windows of Units.	None.	All aspects.
Underground water, wastewater, electrical lines & systems.	All aspects.	None.
Interior water, wastewater, electrical lines & systems serving a Unit exclusively.	None	All aspects.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms smoke/heat detectors, monitoring equipment.	None.	All aspects.
Cable for television or internet.	Standards for location and appearance of exterior cable and/or conduit.	All other aspects.
Television antennas & satellite dishes.	Standards for location and appearance of exterior cable and/or conduit.	All other aspects.

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Item 6.

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

TAX CERTIFICATE

[attached]

{W0635323.2}

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

\$5

Tax Certificate

GF#: A15-22302-19 Order submitted: 11/2/2015 11:53 PM Order completed: 1/27/2016 4:00 PM Remit certificate fee to: AVS TAX SERVICE, LLC P.O. Box 366, Addison, TX 75001

Fee: \$50.00 (includes sales tax)

TOTAL SUMMARY OF CURREN	IT YEAR TAXES - ALL PARCELS	
Jurisdiction	Tax Year	Actual Tax
Austin Community College (Williamson County)	2015	\$903.97
City of Cedar Park (Williamson County)	2015	\$4,312.99
Leander ISD	2015	\$13,598.92
Upper Brushy Creek WCID 1A	2015	\$179.89
Williamson County	2015	\$3,971.46
Williamson County FM/RD	2015	\$359.79
		TOTAL: \$23,327.02

		ALL PARCELS

Payable to:	Actual tax total	<u>Amount Due</u> <u>1/2016</u>	Amount Due 2/2016	
Williamson County Tax Assessor-Collector 904 South Main Georgetown, TX 78626	CYR: \$23,327.02 Total Payoff:	\$0.00 \$0.00	\$0.00 \$0.00	
(512) 943-1603				

*** ATTENTION *** IMPORTANT TAX CERTIFICATE NOTATIONS BELOW ****

Per order sheet, legal description ordered as: Lot 1 Block A Edgewater per Plat 2015016045

This Subdivision is new for Tax Year 2016 2015 Subdivision Parent Account(s) are being Reported for the Current Year Tax Roll.

Please refer to notes in Important Tax Account Comments section.

GENERAL APPRAISAL INFORMATION - PARCEL 1 OF 3				
Tax Account Number: R031408	<u>2015 Ass</u>	essed Values		
Property Site Address: 2731 WHITESTONE BLVD E, LEANDER, TX 78641	Land:	\$640,278		
Owner Name: SPANISH CREEK INVESTMENTS LP	Impr:	\$58.271		
Mailing Address: 4801 MONDONEDO CV,	•			
AUSTIN, TX 78738-6028	Ag:	\$920		
Legal Description: AW0009 PARKER, W.S. SUR., ACRES 28.292	Total:	\$211,651		
Parcel ID: R-17-W000-9000-0003-E005				
Acreage: 28.292				
2015 Exemptions: Agricultural Use	Total Est.	Taxes w/o Exemptions: \$18,116.		

Total Tax Rate: 2.593399

*** ATTENTION *** IMPORTANT TAX ACCOUNT COMMENTS ****

This property currently holds a 1-D-1 Agricultural Exemption. Any changes, such as a change in ownership, change in use, land development, etc... may result in a request for reapplication by the Appraisal District and/or may initiate agricultural rollback taxes being issued based on a 5 year value history.

2015 Parent Account for Edgewater per plat document 2015016045 filed in the Official Public records of Williamson County.

2015 Taxes were Paid in Full on 12/28/2015

SUMMARY OF TAXES DUE BY COLLEC	TOR - Tax Account N	lumber R031408 - Parcel	1 of 3
Payable to:	Actual tax to	tal <u>Amount D</u> <u>1/2016</u>	Due <u>Amount Due</u> 2/2016
Williamson County Tax Assessor-Collector	CYR: \$5,488	.96 \$0.00	\$0.00
904 South Main Georgetown, TX 78626 (512) 943-1603	Total Payoff	\$0.00	\$0.00
TAX BILL DETAIL - Tax Acc	count Number R0314	08 - Parcel 1 of 3	
Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector		2015 Tax Rate: 0.100 Est. Taxes w/o Exemp	-
Tax Year	Actual Tax	<u>Amount Due</u> 1/2016	<u>Amount Due</u> 2/2016
2015	\$212.71	\$0.00	\$0.00
TAX BILL DETAIL - Tax Acc	count Number R0314	08 - Parcel 1 of 3	
City of Cedar Park (Williamson County) Collected by: Williamson County Tax Assessor-Collector		2015 Tax Rate: 0.479 Est. Taxes w/o Exemp	- · · · · · · · · · · · · · · · · · · ·
Tax Year	Actual Tax	<u>Amount Due</u> <u>1/2016</u>	<u>Amount Due</u> 2/2016
2015	\$1,014.86	\$0.00	\$0.00
TAX BILL DETAIL - Tax Acc	count Number R0314	08 - Parcel 1 of 3	· · · · · · · · · · · · · · · · · · ·
Leander ISD Collected by: Williamson County Tax Assessor-Collector		2015 Tax Rate: 1.51187 Est. Taxes w/o Exempt: \$10,561.15	
Tax Year	Actual Tax	<u>Amount Due</u> <u>1/2016</u>	<u>Amount Due</u> 2/2016
2015	\$3,199.89	\$0.00	\$0.00

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TAX BILL DETAIL - Tax A	Account Number R031	408 - Parcel 1 of 3	
Upper Brushy Creek WCID 1A		2015 Tax Rate: 0.02	2
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exer	mpt: \$139.71
Tax Year	Actual Tax	Amount Due 1/2016	Amount Due 2/2016
2015	\$42.33	\$0.00	\$0.00
TAX BILL DETAIL - Tax A	Account Number R031	408 - Parcel 1 of 3	
Williamson County		2015 Tax Rate: 0.441529	
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exer	npt: \$3,084.30
Tax Year	Actual Tax	Amount Due 1/2016	Amount Due 2/2016
2015	\$934.51	\$0.00	\$0.00
TAX BILL DETAIL - Tax A	ccount Number R031	408 - Parcel 1 of 3	
Williamson County FM/RD		2015 Tax Rate: 0.04	l .
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exer	npt: \$279.42
		Amount Due	Amount Due
Tax Year	Actual Tax	1/2016	2/2016

http://portal.avs-tx.com/TaxCert/requests/export?reque //tem 6.

GENERAL APPRAISAL INFORMATION	- PARCEL 2 OF 3		
ax Account Number: R000024	2	015 Assesse	d
Property Site Address: 2731 WHITESTONE BLVD E, CEDAR PARK, TX 78613		Value	S
Owner Name: SPANISH CREEK INVESTMENTS LP	Land:	\$1,876,09	9
Aailing Address: 4801 MONDONEDO CV,	Impr:	\$361,47	'8
AUSTIN, TX 78738-6028		\$69	
.egal Description: AW0015 - Anderson, W. Sur., SERIAL # 12334258A, TITLE # 01			
ABEL # PFS0700894, ACRES 22.788	Total:	\$609,15	6
Parcel ID: R-17-W001-5000-0003-AA05			
Acreage: 22.788			
2015 Exemptions: Agricultural Use	Total E	st. Taxes w/o	Exemptions:
	\$58,02	9.30	·
Total Tax Rate: 2.5933	99		<u> </u>
*** ATTENTION *** IMPORTANT TAX ACCC	UNT COMMENTS ****	r	
2015 Parent Account for Edgewater per plat document 2015016045 County.	tory. filed in the Official	Public rec	ords of Williamso
2015 Parent Account for Edgewater per plat document 2015016045 County.		Public rec	ords of Williamso
2015 Parent Account for Edgewater per plat document 2015016045 County.	filed in the Official		
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco	filed in the Official unt Number R000024		
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: <u>Actual t</u> Williamson County Tax Assessor-Collector CYR: \$	filed in the Official unt Number R000024 ax total <u>Ar</u>	- Parcel 2 of nount Due	3 <u>Amount Due</u> <u>2/2016</u> \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Total Pa	filed in the Official unt Number R000024 <u>ax total 1/</u> 15,797.84 \$	- Parcel 2 of nount Due 2016	3 <u>Amount Due</u> 2/2016
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Total Pa Georgetown, TX 78626	filed in the Official unt Number R000024 <u>ax total 1/</u> 15,797.84 \$	- Parcel 2 of nount Due 2016 0.00	3 <u>Amount Due</u> <u>2/2016</u> \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603	filed in the Official unt Number R000024 <u>ax total 1/</u> 15,797.84 \$ ayoff: \$	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00	3 <u>Amount Due</u> <u>2/2016</u> \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626	filed in the Official unt Number R000024 <u>ax total 1/</u> 15,797.84 \$ ayoff: \$	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00	3 <u>Amount Due</u> <u>2/2016</u> \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County)	filed in the Official unt Number R000024 <u>ax total 1/</u> 15,797.84 \$ ayoff: \$	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 a: 0.1005	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603	filed in the Official unt Number R000024 ax total <u>1//</u> 15,797.84 \$/ ayoff: \$/ R000024 - Parcel 2 of 3 2015 Tax Rate Est. Taxes w/ Amount Due	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 e: 0.1005 b Exempt: \$2,5	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual to Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector Tax Year Actual Tax	filed in the Official unt Number R000024 ax total <u>1/</u> 15,797.84 \$ ayoff: \$ 2000024 - Parcel 2 of 3 2015 Tax Rate Est. Taxes w/ <u>Amount Due</u>	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 e: 0.1005 c Exempt: \$2,3	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00 248.76 <u>Amount Due</u>
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector Tax Year Actual Tax 2015 \$612.20	filed in the Official unt Number R000024 ax total <u>Ar</u> 15,797.84 \$4 ayoff: \$4 R000024 - Parcel 2 of 3 2015 Tax Rate Est. Taxes w/4 <u>Amount Due</u> <u>1/2016</u> \$0.00	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 e: 0.1005 o Exempt: \$2,3 2 5	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00 248.76 <u>Amount Due</u> <u>2/2016</u>
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual te Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector Tax Year Actual Tax 2015 \$612.20	filed in the Official unt Number R000024 ax total <u>1//</u> 15,797.84 \$ ayoff: \$ R000024 - Parcel 2 of 3 2015 Tax Rate Est. Taxes w/r Amount Due <u>1/2016</u> \$0.00 R000024 - Parcel 2 of 3	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 e: 0.1005 b Exempt: \$2,: 3 3	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00 248.76 <u>Amount Due</u> <u>2/2016</u>
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector Tax Year Actual Tax 2015 \$612.20	filed in the Official unt Number R000024 ax total 1// 15,797.84 \$1 ayoff: \$1 R000024 - Parcel 2 of 3 2015 Tax Rate Est. Taxes w/ Amount Due 1/2016 \$0.00 R000024 - Parcel 2 of 3 2015 Tax Rate	- Parcel 2 of <u>nount Due</u> 2016 0.00 0.00 3 e: 0.1005 b Exempt: \$2,: 3 3	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00 248.76 <u>Amount Due</u> <u>2/2016</u> \$0.00
2015 Parent Account for Edgewater per plat document 2015016045 County. 2015 Taxes were Paid in Full on 12/28/2015 SUMMARY OF TAXES DUE BY COLLECTOR - Tax Acco Payable to: Actual t Williamson County Tax Assessor-Collector CYR: \$ 904 South Main Georgetown, TX 78626 (512) 943-1603 TAX BILL DETAIL - Tax Account Number F Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector Tax Year Actual Tax 2015 Sefer Strate S	filed in the Official unt Number R000024 ax total 1// 15,797.84 \$/ ayoff: \$/ R000024 - Parcel 2 of : 2015 Tax Rate Est. Taxes w/ Amount Due 2015 Tax Rate 50.00	- Parcel 2 of mount Due 2016 0.00 0.00 3 a: 0.1005 b Exempt: \$2, 3 a: 0.4795 o Exempt: \$10	3 <u>Amount Due</u> <u>2/2016</u> \$0.00 \$0.00 248.76 <u>Amount Due</u> <u>2/2016</u> \$0.00

TAX BILL DETAIL - Tax Account Number R000024 - Parcel 2 of 3

Leander ISD

Collected by: Williamson County Tax Assessor-Collector

2015 Tax Rate: 1.51187 Est. Taxes w/o Exempt: \$33,829.26 \$5

PM

Actual Tax	Amount Due	Amount Due
		<u>2/2016</u> \$0.00
\$9,209.04	φ0.00	
ccount Number R000	024 - Parcel 2 of 3	
	2015 Tax Rate: 0.02	
Collected by: Williamson County Tax Assessor-Collector Est. Taxes w/o Exempt:		npt: \$447.52
Actual Tax	Amount Due	Amount Due
Actual Tax	1/2016	<u>2/2016</u>
\$121.83	\$0.00	\$0.00
	Est. Taxes w/o Exer	npt: \$9,879.55
Actual Tax	Amount Due 1/2016	Amount Due 2/2016
\$2,689.60	\$0.00	\$0.00
ccount Number R000	024 - Parcel 2 of 3	
	2015 Tax Rate: 0.04	
	Est. Taxes w/o Exer	
Actual Tax	Est. Taxes w/o Exer Amount Due 1/2016	
	<u>Actual Tax</u> \$121.83 Account Number R000 <u>Actual Tax</u> \$2,689.60	Actual Tax 1/2016 \$9,209.64 \$0.00 ccount Number R000024 - Parcel 2 of 3 2015 Tax Rate: 0.02 2015 Tax Rate: 0.02 Est. Taxes w/o Exer Actual Tax Amount Due 1/2016 \$121.83 \$0.00 \$0.00 ccount Number R000024 - Parcel 2 of 3 2015 Tax Rate: 0.44 Est. Taxes w/o Exer Actual Tax \$121.83 \$0.00 ccount Number R000024 - Parcel 2 of 3 2015 Tax Rate: 0.44 Est. Taxes w/o Exer Actual Tax \$2,689.60 \$0.00 ccount Number R000024 - Parcel 2 of 3

http://portal.avs-tx.com/TaxCert/requests/export?reque

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GENERAL APPRAISAL INFORMATION - PARCEL 3 OF 3						
Tax Account Number: R524206	2015 Assessed Values					
Property Site Address: RONALD W REAGAN BLVD, CEDAR PARK, TX 78613	Land:	\$78,670				
Owner Name: SPANISH CREEK INVESTMENTS LP	Impr:	\$0				
Mailing Address: 4801 MONDONEDO CV,	,					
AUSTIN, TX 78738-6028	Total:	\$78,670				
Legal Description: AW0009 AW0009 - Parker, W.s. Sur., ACRES 1.032						
Parcel ID: R-17-W000-9000-0019-A005						
Acreage: 1.032						
2015 Exemptions: No exemptions	Total Est. Taxes w/o Exemptions: \$2,040.23					

Total Tax Rate: 2.593399

*** ATTENTION *** IMPORTANT TAX ACCOUNT COMMENTS ****

This property held a 1-D-1 Agricultural Exemption for Tax Years 2013 and Prior Any changes, such as a change in ownership, change in use, land development, etc... may result in a request for reapplication by the Appraisal District and/or may initiate agricultural rollback taxes being issued based on a 5 year value history.

Property is currently being assessed as Vacant Land - Please Verify No improved structures are situated on the land.

2015 Parent Account for Edgewater per plat document 2015016045 filed in the Official Public records of Williamson County.

2015 Taxes were Paid in Full on 12/28/2015

SUMMARY OF TAXES DUE BY COLLECTOR - Tax Account Number R524206 - Parcel 3 of 3				
Payable to:	Actual tax total	<u>Amount Due</u> 1/2016	Amount Due 2/2016	
Williamson County Tax Assessor-Collector	CYR: \$2,040.22	\$0.00	\$0.00	
904 South Main Georgetown, TX 78626 (512) 943-1603	Total Payoff:	\$0.00	\$0.00	

TAX BILL DETAIL	- Tax Accou	Int Number R524	206 - Parcel 3 of 3				
Austin Community College (Williamson County) Collected by: Williamson County Tax Assessor-Collector	community College (Williamson County) 2015			015 Tax Rate: 0.1005 st. Taxes w/o Exempt: \$79.06			
Tax Year		Actual Tax	<u>Amount Due</u> <u>1/2016</u>	Amount Due 2/2016			
2015		\$79.06	\$0.00	\$0.00			
TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3							
City of Cedar Park (Williamson County) Collected by: Williamson County Tax Assessor-Collector			2015 Tax Rate: 0.4795 Est. Taxes w/o Exempt: \$377.22				
Tax Year		Actual Tax	<u>Amount Due</u> <u>1/2016</u>	<u>Amount Due</u> 2/2016			
2015		\$377.22	\$0.00	\$0.00			
TAX BILL DETAIL - Tax Account Number R524206 - Parcel 3 of 3							
Leander ISD Collected by: Williamson County Tax Assessor-Collector			2015 Tax Rate: 1.51187 Est. Taxes w/o Exempt: \$1,189.39				
<u>Tax Year</u>		Actual Tax	<u>Amount Due</u> <u>1/2016</u>	Amount Due 2/2016			
2015		\$1,189.39	\$0.00	\$0.00			

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TAX BILL DETAIL - Tax	Account Number R524	206 - Parcel 3 of 3			
Upper Brushy Creek WCID 1A		2015 Tax Rate: 0.02	2015 Tax Rate: 0.02		
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exempt: \$15.73			
		Amount Due	Amount Due		
Tax Year	Actual Tax	1/2016	2/2016		
2015	\$15.73	\$0.00	\$0.00		
TAX BILL DETAIL - Tax /	Account Number R524	206 - Parcel 3 of 3			
Williamson County		2015 Tax Rate: 0.441529			
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exempt: \$347.35			
Tax Year	Actual Tax	Amount Due	Amount Due		
		<u>1/2016</u>	<u>2/2016</u>		
2015	\$347.35	\$0.00	\$0.00		
TAX BILL DETAIL - Tax /	Account Number R524	206 - Parcel 3 of 3			
Williamson County FM/RD		2015 Tax Rate: 0.04	1		
Collected by: Williamson County Tax Assessor-Collector		Est. Taxes w/o Exempt: \$31.47			
<u>Tax Year</u>	Actual Tax	Amount Due 1/2016	Amount Due 2/2016		
2015	\$31.47	\$0.00	\$0.00		
2013	QU1.4/	φυ.υυ	20,00		

***Disclaimer: All applicable ad valorem taxes on the above referenced property have been checked and are found to have the status provided except: Status does not cover any changes made to the tax records of the agencies listed after the "Order completed" date hereof. Does not include and is not a certification of any mineral taxes, personal property taxes (including mobile homes), or any other non-ad valorem taxes. The event a parcel or tract of real property covered in a request had been previously re-subdivided, whereas previous tax account was assigned, and/or is to be split, creating a new tax account, and specific tax information is not readily available, AVS Tax Services shall only be required to, and claims limited to, furnish Appraisal and Tax Information for the parcel or tract as shown on the Current Records of the Appraisal and Taxing Authority.

APPENDIX A

DECLARANT RESERVATIONS AND REPRESENTATIONS

A.1. <u>General Provisions</u>.

A.1.1. <u>Introduction</u>. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling Declarant-related provisions in this Appendix.

A.1.2. <u>General Reservation and Construction</u>. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this <u>Appendix A</u> and any other Document, this <u>Appendix A</u> controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's interests in the Property.

A.1.3. <u>Purpose of Development and Declarant Control Periods</u>. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "Development Period", as specifically defined in *Section 1.15* of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's recordation of a notice of termination. Declarant Control Period is defined in *Section 1.13* of the Declaration. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' written notice.

A.2. <u>Declarant Control Period Reservations</u>. For the benefit and protection of Owners and mortgagees, and for the purpose of ensuring a complete and orderly build-out and sellout of the Property, Declarant will retain control of the Association, subject to the following:

A.2.1. <u>Association Budget</u>. During the Declarant Control Period, the Declarantappointed Board will establish a projected budget for the Property as a fully developed, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

A.2.2. <u>Officers and Directors</u>. During Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation: within one hundred and twenty (120) days after fifty percent (50%) of the maximum number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third (1/3) of the Board must be elected by Owners other than Declarant.

For each Unit owned by Declarant, A.2.3. Obligation for Assessments. Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments and Landscape Assessments, during the Declarant Control Period only, Declarant at Declarant's option may support the Association's budget by either of the following methods: (i) Declarant will pay Regular Assessments and Landscape Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) Declarant will assume responsibility for the difference between the Association's actual common expenses as they are paid and the Regular Assessments and Landscape Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant owned Unit according to the Unit's allocated Interest for Assessments.

A.2.4. <u>Obligation for Reserves</u>. During the Declarant Control Period, neither the Association nor Declarant may use the Association working capital or reserve funds to pay operational expenses of the Association.

A.2.5. <u>Enhancements</u>. During the Declarant Control and Development Periods, Declarant – solely at Declarant's discretion – may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, and seasonal color in landscaping.

A.2.6. <u>Expenses of Declarant</u>. Expenses related to the marketing of the Property will be paid by Declarant and are not expenses of the Association.

A.2.7. <u>Management Contract</u>. If Declarant enters into a professional management contract on behalf of the Association during Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at

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least thirty (30) days written notice to the manager, at any time after a Board elected by the Owners other than Declarant takes office.

A.3. <u>Development Period Rights</u>. Declarant makes the following representations and reservations regarding Declarant's development of the Property:

A.3.1. <u>Annexation</u>. The Property is subject to expansion by phasing for up to seven (7) years from the date this Declaration is recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by recording an amendment or supplement of this Declaration, executed by Declarant, in the Official Public Records of Williamson County, Texas.

A.3.2. <u>Creation of Units</u>. When created, the Property contains one hundred three (103) Units; however, Declarant reserves the right to create up to and including three hundred (300) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section* 2.2 of the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit in the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

A.3.3. <u>Changes in Development Plan</u>. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements.

A.3.4. <u>Architectural Control</u>. During the Development Period, Declarant has the absolute right of architectural control. Notwithstanding the foregoing, during the Development Period and after termination of Declarant Control, or earlier if Declarant permits, the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications of Occupied Units that are owned by persons other than Declarant. A modifications committee may not involve itself with the approval of new Units or Common Elements.

A.3.5. <u>Transfer Fees</u>. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.

A.3.6. <u>Website & Property Name</u>. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS A.3.7. <u>Fines and Penalties</u>. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A.3.8. <u>Statutory Development Rights</u>. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Property; (ii) to create Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.9. <u>Development Rights Reserved</u>. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.10. <u>Amendment</u>. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.
- (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.

DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

- (vi) To withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or 'Subject to Development Rights" in the exercise of statutory Development Rights.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.
- (ix) For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

A.4. <u>Special Declarant Rights</u>. As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

- (i) The right to complete or make Improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.
- (iii) The right to make the Property part of a larger condominium or planned community.
- (iv) The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.
- (v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and brokers parties – at the Property to promote the sale of Units.

- (vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- (vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

A.5. <u>Additional Easements and Rights</u>. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

- (i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
- (ii) The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- (iii) The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
- (iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.
- (v) An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element Improvements.

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(vi) The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant.

A.6. <u>Marketing Other Locations</u>. This Declaration grants to Declarant a number of significant rights to market the Property. Declarant hereby reserves for itself and its affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing <u>off-site developments</u> of Declarant or its affiliates for the duration of the Development Period, even though Declarant may have completed the marketing of Units in the Property. Additionally, Declarant – at Declarant's sole option and discretion – may extend the effect of this Section for up to twelve (12) months after the end of the Development Period by paying the Association \$1,000.

A.7. <u>Common Elements</u>. Because the Common Elements are owned by the Owners, collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

A.8. <u>Successor Declarant</u>. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and Recorded in the Official Public Records of Williamson County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

ARMBRUST & BROWN PLLC 100 CONGRESS AVENUE STE 1300 AUSTIN, TX 78701



FILED AND RECORDED OFFICIAL PUBLIC RECORDS 2016008168

Nanay E.+

Nancy E. Rister, County Clerk Williamson County, Texas January 29, 2016 04:01 PM FEE: \$465.00 TKIRK

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DECLARATION OF CONDOMINIUM REGIME EDGEWATER CONDOMINIUMS

Item 6.

Appendix B



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 30, 2004

The Honorable Michael S. Wenk Hays County Criminal District Attorney Hays County Justice Center 110 East Martin Luther King San Marcos, Texas 78666 Opinion No. GA-0223

Re: Whether a condominium development is a subdivision subject to county regulation under Local Government Code chapter 232 (RQ-0177-GA)

Dear Mr. Wenk:

You ask whether a condominium development is a subdivision subject to county regulation under Local Government Code chapter 232.¹

I. Background

Your questions involve the relationship between chapter 232 of the Local Government Code and chapter 82 of the Property Code, the Uniform Condominium Act. Chapter 232, subchapter A generally requires the owner of a tract of land located outside the limits of a municipality to have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out, among other things, a subdivision of the tract. See TEX. LOC. GOV'T CODE ANN. § 232.001(a)(1) (Vernon Supp. 2004). The commissioners court is authorized to approve or disapprove a plat based on whether it meets statutory requirements. See id. § 232.002. In addition, you indicate that Hays County falls within subchapter E of chapter 232, see id. § 232.100 (applicability), which governs subdivisions in urban and adjacent counties and generally authorizes the commissioners court in such a county to "adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county," id. § 232.101(a); see also Request Letter, supra note 1, at 1 (noting that Hays County is an "urban county").

Chapter 82 of the Property Code provides for ownership of land separately and commonly by condominium owners. Under chapter 82, a "condominium" means

> a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real

¹Letter from Honorable Michael S. Wenk, Hays County Criminal District Attorney, to Honorable Greg Abbott, Texas Attorney General (Jan. 28, 2004) (on file with the Opinion Committee; *also available at* http://www.oag.state .tx.us) [hereinafter Request Letter].

property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

TEX. PROP. CODE ANN. § 82.003(a)(8) (Vernon 1995). A condominium is created "by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property . . . The declaration shall be recorded in each county in which any portion of the condominium is located." *Id.* § 82.051(a); *see also id.* § 82.003(a)(11) ("Declaration' means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument."). Chapter 82 also requires the filing of condominium plats and plans. *See id.* § 82.059(a) ("Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately."); *see also id.* § 82.003(a)(18) ("'Plan' means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings."), (a)(19) (defining "plat").

You explain that Hays County regulates the subdivision of land in all unincorporated areas of Hays County pursuant to chapter 232. See Request Letter, supra note 1, at 1. The Hays County Environmental Health Department administers these regulations and seeks the commissioner court's approval of subdivision plats. See id. A developer in Hays County is proposing to develop a 12-acre parcel of land as a condominium governed by chapter 82 of the Property Code. See id. A brief submitted on behalf of the Hays County Commissioners Court describes the development as follows: "The proposed development comprises 17 condominium units ..., None of the ... units share any walls, foundations, roofs or structural elements and each ... unit exclusively occupies the land on which it is located, similar to a typical single family residence."² It further states that each unit will be situated on a .13 acre parcel "that will be designated on the condominium declaration as a 'limited common element' reserved for the exclusive use and enjoyment of the owner of the condominium unit." Id.; see also TEX. PROP. CODE ANN. § 82.003(a)(17) (Vernon 1995) (defining "limited common element" to mean "a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units").

Hays County has obtained a legal opinion concluding that the condominium development is a subdivision subject to regulation under chapter 232. See Request Letter, supra note 1, at 2; see also id. Exhibit B (brief from David B. Brooks (Dec. 1, 2003)). The developer, on the other hand, takes the position that "the development does not qualify as a 'subdivision' and is therefore exempt from development regulations." Id.; see also id. Exhibit C (brief from James M. Butler (Jan. 26, 2004)) [hereinafter Butler Brief]. The Hays County Commissioners Court has asked you to seek an

²Brief from Phillip H. Schmandt, McGinnis, Lochridge & Kilgore, L.L.P., to Honorable Greg Abbott, Texas Attorney General, at 2 (Apr. 27, 2004) (on file with the Opinion Committee).

opinion from this office clarifying whether chapter 232 applies to condominium developments. You ask us to address two issues:

- Whether a condominium development pursuant to Chapter 82, Texas Property Code, is subject to the regulatory control of the county under the subdivision statutes contained in Chapter 232 of the Local Government Code?
- 2) Does Section 232.100, Texas Local Government, allow urban counties to require condominium or other multi-unit developments (a building, structure or combination of structures which have been designed to contain units in which more than two families may reside) to meet subdivision or infrastructure planning requirements?

Request Letter, supra note 1, at 2.

II. Analysis

A. Local Government Code Chapter 232, Subchapter A and Property Code Chapter 82

To answer your first question, we must determine whether a condominium development such as the one described above may be a "subdivision" within the meaning of Local Government Code, chapter 232, subchapter A. If we conclude that it may be, we then consider whether Property Code chapter 82 exempts a condominium from county regulation.

Section 232.001 of the Local Government Code establishes when a landowner must file a plat:

(a) The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:

a subdivision of the tract, including an addition;

(2) lots; or

(3) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts. The Honorable Michael S. Wenk - Page 4 (GA-0223)

(a-1) A division of a tract under Subsection (a) includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

TEX. LOC. GOV'T CODE ANN. § 232.001 (Vernon Supp. 2004). In addition, section 232.0015 authorizes a county to define when plats are not required: "To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter." *Id.* 232.0015(a). *See generally* Tex. Att'y Gen. Op. No. JC-0260 (2000) (concluding that section 232.0015(a) authorizes a county to "define and classify divisions" to except from the platting requirement particular subdivisions that would otherwise be subject to the requirement, even though the exception is not one listed in section 232.0015(b)-(k)). Section 232.0015(b)-(k) excepts various subdivisions from the platting requirement, but neither the county nor the developer suggests that any one of those exceptions is relevant here. *See* TEX. LOC. GOV'T CODE ANN. § 232.0015(b)-(k) (Vernon Supp. 2004).

Courts have broadly construed the term "subdivision" in section 232.001 and similar land regulation statutes. In 1985, a court considered whether the statutory predecessors to section 232.001, former Revised Civil Statutes articles 6626a and 6702-1, required a landowner who intended to lease spaces on his land for mobile homes to file a plat. See Cowboy Country Estates v. Ellis County, 692 S.W.2d 882 (Tex. App.–Waco 1985, no writ). The landowner argued that the land in question did not constitute a "subdivision" within the statutes because the landowner "ha[d] no intention of selling lots, but only to lease spaces for mobile homes; that since the land [was] not being divided for purpose of sale, that it [was] not a 'subdivision' under these statutes." Id. at 886. The court disagreed:

[T]he statutes concerned do not make any requirement that the lots be for fee simple purchases in order for a tract of land to be constituted as a subdivision. The manifest overall purpose of the statutes concerned is to give counties the power to control subdivisions to protect its citizens in matters of public health and sanitation, drainage, and maintenance of public roads. These public problems and concerns are just as great in the case of mobile home parks where the spaces are leased as in the case where lots are subdivided for purpose of sale.

Id. at 886-87. Cases construing the term "subdivision" in statutes providing for municipal land use regulation also construe the term broadly. See City of Lucas v. N. Tex. Mun. Water Dist., 724 S.W.2d 811, 823 (Tex. App.–Dallas 1987, writ ref'd n.r.e.) (the term "subdivision" as used in former article 970a, section 4 "may be simply a division of a tract of land into smaller parts"); City of Weslaco v. Carpenter, 694 S.W.2d 601, 603 (Tex. App.–Corpus Christi 1985, writ ref'd n.r.e.) (the term "subdivision" as used in former article 970a, section 4 "may refer simply to the act of partition itself"). As one court stressed, "a subdivision of land, whether it refers to merely partitioning

property or instead refers to sales of residential sites involving separate owners, suggests development." City of Weslaco, 694 S.W.2d at 603.

By contrast, in *Elgin Bank of Texas v. Travis County*, 906 S.W.2d 120, 124 (Tex. App.–Austin 1995, writ denied), the court construed the section 232.001 platting requirement narrowly, holding that it did not apply to an owner who subdivides but who does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts. The court relied in part on an opinion of this office, Attorney General Opinion JM-1100 (1989). See id. at 121. In 1999, the legislature amended section 232.001 and other subchapter A provisions to clarify the platting requirement's breadth and commissioners courts' authority to regulate subdivisions. See Act of May 5, 1999, 76th Leg., R.S., ch. 129, §§ 1-2, 1999 Tex. Gen. Laws 574, 575-76. Bill analyses for the 1999 legislation indicate that the legislature expressly intended to close the loophole in county subdivision authority created by the *Elgin Bank* construction of section 232.001.³

A brief for the developer asserts that "by its very definition, a condominium unit cannot exist on a subdivided tract of land," because owners of condominium units "retain an interest in the undivided common elements, that is, they own an undivided interest in land; not divided separate interests in land." Butler Brief, *supra* p. 2, at 3. We disagree that a condominium unit cannot exist on tract of land that is "subdivided" within the meaning of section 232.001 of the Local Government Code.

First, under the case law, how land is to be owned is not dispositive of whether a division of land constitutes a subdivision under section 232.001. In *Cowboy Country Estates*, 692 S.W.2d 882, the only case to address the meaning of the word "subdivision" in section 232.001 or its predecessors, the court concluded that the landowner planned to subdivide the land even though he would continue to own it in fee simple. *See id.* at 886 ("[T]he statutes concerned do not make any requirement that the lots be for fee simple purchases in order for a tract of land to be constituted as [a] subdivision."); *see also City of Weslaco*, 694 S.W.2d at 603 (rejecting landowner's contention that "the term 'subdivision' must be construed as requiring the land to be split into at least two different lots which are owned by different people"). Thus, land may be subdivided for purposes of section 232.001 even though the land is owned by a single owner or commonly owned by multiple owners.

Second, in *Cowboy Country Estates*, the landowner divided the land by leasing separate parcels as spaces for mobile homes. As the term is defined in the Property Code, a "condominium" also involves dividing property into separate parcels, *see* TEX. PROP. CODE ANN. § 82.003(a)(8) (Vernon 1995) ("Condominium" means a form of real property with portions of the real property

³See SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (As Filed dated Mar. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Comm. Rpt. dated Mar. 25, 1999); HOUSE COMM. ON LAND & RES. MGMT., BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Engrossed Version dated Apr. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Engrossed Version dated Apr. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Engrossed Version dated Apr. 22, 1999); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 710, 76th Leg., R.S. (1999) (Engrossed July 6, 1999).

designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions") (emphasis added), including condominium "units," which are "physical portion[s] of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration," id. § 82.003(a)(23). Moreover, in the case of the proposed condominium development at issue here, units will be located on .13 acre parcels of land designated as "limited common elements," which are "portion[s] of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units." Id. § 82.003(a)(17). The developer's brief asserts that the designation of a unit for separate ownership is not the subdivision of land because "the underlying physical land will not and cannot be subdivided," Butler Brief, supra p. 2, at 4, but, again, land need not be separately owned in order to be subdivided under section 232,001. See Cowboy Country Estates, 692 S.W.2d 882. The seventeen .13 acre parcels, each reserved for the unit owner's exclusive use, are as much a division of land as the mobile home spaces at issue in Cowboy Country Estates. See id. at 885; see also City of Weslaco, 694 S.W.2d at 602 (concluding that plan to develop a 8.17 acre park by renting spaces for mobile homes and recreational vehicles constituted a subdivision of land). Accordingly, we conclude that section 232.001 authorizes a commissioners court to determine that such a condominium development constitutes a subdivision that must be platted.4

Having concluded that subchapter A authorizes a commissioners court to determine that a condominium development is a subdivision for which the landowner must prepare and file a plat, we consider whether chapter 82 of the Property Code, the Uniform Condominium Act, forecloses county regulation of condominium developments.

The developer's brief asserts that chapter 82 exclusively regulates condominiums and excepts condominiums from regulation under chapter 232 of the Local Government Code. See Butler Brief, supra p. 2, at 4. However, no provision in chapter 82 expressly states that a condominium is exempt from chapter 232 and several provisions indicate that the legislature did not intend to except a condominium from regulation as a subdivision under chapter 232. First, section 82.006 indicates that chapter 82 precludes a county or city from prohibiting or discriminating against condominium ownership. See TEX. PROP. CODE ANN. § 82.006 (Vernon 1995) ("A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership."). But the same provision laws or regulations: "Otherwise, this chapter 42 does not otherwise invalidate or modify subdivision laws or regulations. "Id. (emphasis subdivision, building code, or other real property use law, ordinance, or regulation." Id. (emphasis

⁴Section 232.021(11), cited as authority in a brief submitted to the county on behalf of the developer, is in Local Government Code chapter 232, subchapter B, which does not apply to the county. See Butler Brief, supra p. 2, at 2; see also TEX.LOC.GOV'T CODE ANN. § 232.022 (Vernon Supp. 2004) (applicability of subchapter B to county located near international border). We note, however, that this office has also broadly construed the meaning of the terms "subdivision" and "subdivide" in subchapter B. See Tex. Att'y Gen. Op. No. DM-485 (1998) (concluding that a residential lease used by a school district that conveyed to a teacher the right to occupy a manufactured home on a distinct tract of land divided the surface area of land).

added). Section 82.006 precludes a county from discriminating against condominiums but expressly preserves a county's authority to regulate them as subdivisions.

Second, chapter 82 defines the term "plat" to exclude Local Government Code chapter 232 subdivision plats:

"Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

Id. § 82.003(a)(19) (emphasis added); *see also id.* § 82.051(d) ("The book for the condominium plat records shall be the same size and type as the book for recording subdivision plats."). Thus, a condominium plat is legally distinct from a subdivision plat. Section 82.051(d) requires a county clerk to record condominium plats or plans in the real property records "without prior approval from any other authority." *Id.* § 82.051(d). Importantly, however, section 82.051(e) expressly provides that chapter 82 "does not affect or diminish the rights of municipalities and *counties to approve plats of subdivisions* and enforce building codes as may be authorized or required by law." *Id.* § 82.051(e) (emphasis added). Section 82.051(e) expressly preserves cities' and counties' rights to apply building codes and subdivision requirements to condominiums. Thus, while a commissioners court lacks the authority to approve a *condominium plat*, chapter 82 does not affect county authority to require or approve a *subdivision plat* for a condominium for which a subdivision plat is required under chapter 232 of the Local Government Code.

For these reasons, we conclude that chapter 82 does not prohibit a county from requiring a condominium development to file a plat under chapter 232, subchapter A.

B. Local Government Code Chapter 232, Subchapter E

You also ask us to address whether section 232.100 of the Local Government Code "allow[s] urban counties to require condominium or other multi-unit developments . . . to meet subdivision or infrastructure planning requirements." Request Letter, *supra* note 1, at 2.

Section 232.100 makes subchapter E applicable to certain urban counties and counties adjacent to them. *See* TEX. LOC. GOV'T CODE ANN. § 232.100 (Vernon Supp. 2004).⁵ Section 232.101(a) provides subchapter E counties with broad authority to regulate subdivisions:

⁵Section 232.100 provides that subchapter E applies only to the subdivision in a county that "(A) has a population of 150,000 or more and is adjacent to an international border; (B) has a population of 700,000 or more; (C) is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county, as designated by the United States Office of Management and Budget; or (D) is adjacent to a county with a population of 700,000 or more, is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent." TEX. LOC. GOV'T CODE ANN. § 232.100(2) (Vernon Supp. 2004).

(a) By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

Id. § 232.101(a).⁶ The legislature enacted subchapter E in 2001 to give affected counties greater authority to regulate subdivision infrastructure. As a bill analysis explains,

Current law allows cities to make certain requirements in the development of infrastructure for subdivisions. No such provision exists for counties. S.B. 873 grants counties the authority to: adopt subdivision regulations, including lot size and setback limitations; enforce a major thoroughfare plan and establish right of way; require possession of a plat compliance certificate before utility hookups; and enact other regulations relevant to responsible development.⁷

In addition to the broad regulatory authority granted in section 232.101, sections 232.102 through 232.106 authorize counties to adopt various requirements. *See, e.g., id.* §§ 232.102 (major thoroughfare right-of-ways), .103 (lot frontages), .104 (set-backs).

You ask whether this regulatory authority applies to condominium developments or other multi-unit developments. The authority granted to a county to regulate subdivisions in section 232.101(a) applies to a subdivision of land subject to county regulation under subchapter A and is subject to the same exemptions provided in subchapter A in section 232.0015. See id. §§ 232.100(1) ("This subchapter applies only to the subdivision of the land that is [] subject to county regulations under Subchapter A or B."), 232.101(c) ("The authority granted under Subsection (a) is subject to the exemptions to plat requirements provided for in Section 232.0015."). Furthermore, section 232.107 expressly states that the authority granted to a county by subchapter E is "cumulative of and in addition to the authorities granted under this chapter and all other laws to counties to regulate the subdivision of land." *Id.* § 232.107. These provisions indicate that the legislature expressly intends subchapter E to add to a county's authority to regulate subdivisions subject to platting under

⁷SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Enrolled Version dated June 5, 2001); see also SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (As Filed dated Mar. 15, 2001); SENATE COMM. ON INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Comm. Rpt. dated Mar. 28, 2001); HOUSE COMM. ON LAND & RES. MGMT., BILL ANALYSIS, Tex. S.B. 873, 77th Leg., R.S. (2001) (Comm. Rpt. dated Apr. 30, 2001).

⁶See also id. § 232.101(b) ("Unless otherwise authorized by state law, a commissioners court shall not regulate under this section: (1) the use of any building or property for business, industrial, residential, or other purposes; (2) the bulk, height, or number of buildings constructed on a particular tract of land; (3) the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage; or (4) the number of residential units that can be built per acre of land.").

subchapter A. Thus, we conclude that the term "subdivision" has the same meaning in both subchapters and that subchapter E authorizes a county to further regulate a subdivision regulated under subchapter A.

In answer to your specific question, section 232.100 of the Local Government Code and the other provisions of subchapter E "allow urban counties to require condominium or other multi-unit developments" that are subject to subchapter A "to meet subdivision or infrastructure planning requirements." Request Letter, *supra* note 1, at 2.

SUMMARY

Local Government Code chapter 232, subchapter A authorizes a county to determine that a condominium development is a subdivision of land for which the landowner must prepare and file a plat. Subchapter E of chapter 232 authorizes an urban county to regulate a condominium development that constitutes a subdivision under subchapter A.

Very truly yours,

Greg alhart

GREG ABBOTT Attorney General of Texas

BARRY R. MCBEE First Assistant Attorney General

DON R. WILLETT Deputy Attorney General for Legal Counsel

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GEORGETOWN TEXAS

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Item 6.

The Plan



- •Review Condo Basics
- •Discuss Municipal Regulatory Authority (and Requirements)
- •Illustrate the Challenge new Condo Products can Create
- Review Current Approaches
- •Propose Solutions to help you follow the law!

What We Think a Condo Is: Traditional Vertical Condominium Building

- •Multistory building with individual <u>units</u>
- •Similar to apartment buildings
- •This is what most people think of as a condo
- •Common elements typically include lobby, hallways, amenities (pool, sport court), parking



Also a Condo...



- "Site Condominium"
- Detached single family houses
- Each house and surrounding space is one unit
- Common elements are roads, trails, amenity centers

Also a Condo...



- Economic Development Condos
- Creation of ownership interest within one structure
- Allows for public ownership within private project
- Useful tool for cities to incentivize development.

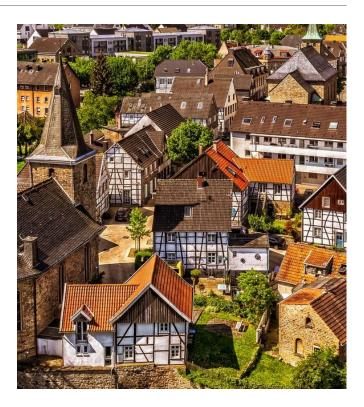
What a Condominium Actually Is:

Condos are a <u>form of property ownership</u> – Not a type of building or a land use.

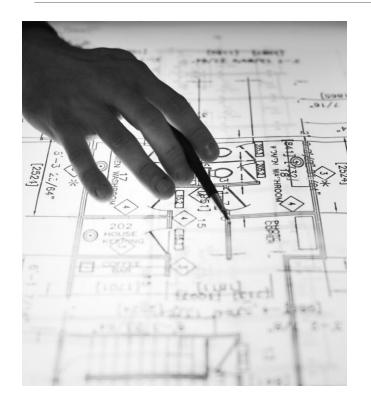
Condominium Definition:

A form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. TUCA Sec. 82.003.

The unit owners have to have an ownership interest in the common elements—an HOA or POA or "Condo Association" may not own the common elements without the unit owners.



Condos are development tools



Ownership structure that gives more control over the development to the owners of the property

- Rules
- Boards and committees, etc.

Create a product people want

- Amenities
- Shared cost of maintenance
- Lower personal overhead

Can allow for creative development incentives

 Public-Private partnerships in buildings that would be impossible with fee-simple ownership

Texas Uniform Condominium Act (TUCA)

Section 82.051 – Creation of Condos

- Condominiums are created by recording a Declaration in the Deed Records
- (e) This chapter <u>does not affect or diminish the rights of municipalities and counties</u> to approve plats of subdivisions and enforce building codes as may be authorized or required by law.

Section 82.006 – Applicability of Municipal Regulations:

- Cities may not pass regulations that would prohibit condo regimes.
- Cities may not impose any requirement on a condominium that it would not impose on a *physically identical development under a different form of ownership*.
- Otherwise, *this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation*.

(Additionally -- Cities have <u>no authority</u> to regulate Declarations directly.)

Regulatory Nutshell

- •Condos are a form of ownership and not a type of project or construction. (TUCA § 82.003)
- •The condo regime does not affect municipal regulatory authority. (TUCA § 82.051(e) & 82.006)
- •Cities can regulate condos in the same manner they would regulate a <u>physically identical</u> <u>development</u>.



Physically Identical Property: Apartment vs. Traditional Condo

Apartment Building Process

- Meetings with planners
- Subdivision plat (Legal lot status)
- Site plan (depending on the city)

Vertical Condo

• Can be exactly the same process.

Process meant for a more intense use than a single-family detached.

Condo treated the same as a physically identical apartment building, and the law is followed!



Physically Identical Property: Site Condo vs. Residential Development

Residential Subdivision

- Platting Process
- All subdivision regulations apply
- All zoning regulations apply
- SF Home permitting process

Site Condos

- If a plat, only 1 lot.
- Some subdivision regulations apply
- Zoning is potentially MF instead of SF
- Site plan and site wide CO
- Developer pushback with the subdivision platting

Condo is often treated different than <u>physically identical</u> 'traditional' residential subdivision.

TUCA NOT being followed!

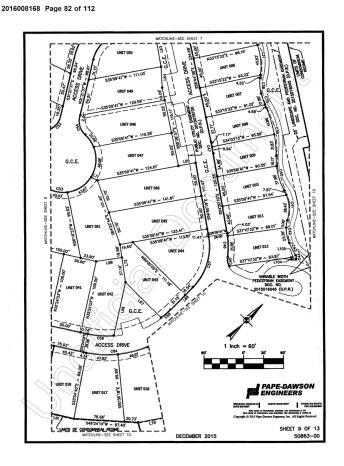


Frequent Disagreement from Developers

- Condominium Declarations often contain highlighted disclaimers that the Declaration does not constitute a subdivision of land.
- This example is from a Site Condo that looks physically identical to a traditional residential subdivision.
- Developers seem to view a condo regime as a force field against municipal regulation based on a condo not being a subdivision of land...

Not a Typical Condominium Unit

Although a Unit resembles a platted lot: (i) a Unit does not include land; (ii) the conveyance of a Unit is not a metes and bounds conveyance of land; and (iii) the creation of a Unit does not constitute a subdivision of land. Instead, each Unit is the surface of a designated piece of land, and everything above the surface for 50 feet, and anything below the surface that serves or supports the above-surface Improvements.



Are Condos Subdivisions of Land? (To trigger subdivision platting...)

•Some Condos are Subdivisions of Land.

• The answer depends on the **physical** layout of the development.

•A Subdivision Plat is required when, "...the owner of a tract of land ... divides the tract into two of more <u>parts</u> to lay out a subdivision of the tract ... to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, <u>or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, <u>alleys, squares, parks</u>, <u>or other parts of the subdivision prepared</u>. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, <u>or by using any other method</u></u>

•AG Opinion in Support – GA-0223 (2004)

The Problem: Restated

• TUCA requires equal treatment of physically identical projects.

- New types of housing (typically) products are receiving different treatment from municipal planners when they are owned as condominiums.
- Potential reasons why:
 - Everyone thinks of condos as vertical condos and applies those rules.
 - Single family detached condo developments are an unfamiliar product for many cities and planners.
 - Every declaration of condominium states it is not a subdivision, which leads some planners to ignore the law and their city's subdivision regs.
 - Developers and their attorneys encourage this. Allegedly.
 - Approaches and Potential Solutions...



Sample Approach—Condo as Zoning Use

CONDOMINIUM RESIDENTIAL use is the use of a site for attached or detached condominiums, as defined in the Texas Property Code.

The minimum site area for a condominium residential use is 14,000 square feet.

At least 3,500 square feet of site area is required for each condominium.

A condominium use with less than 10 dwelling units must provide private personal open space in accordance with the requirements of this subsection.

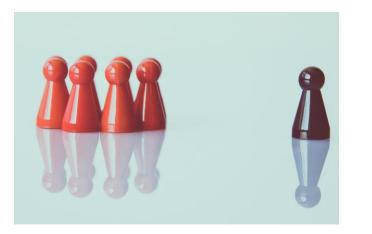
(1) The open space must be a minimum of five percent of the gross site area of the property.

(2) An area of private personal open space at ground level must contain at least 100 square feet and may not be less than ten feet across in each direction.

(3) An area of private personal open space above ground level must contain at least 50 square feet and may not be less than five feet across in each direction.

(4) The requirements of this subsection do not apply to a condominium use located within development that meets the requirements in Subsection (F)(1) of this section.

Sample Approach—Condo Specific Regs



Condominium drives.

(a) In order to provide for orderly development and provision of services, the director of planning or their designee may approve the creation of named *condominium* drives as part of a residential *condominium* project. These drives are not dedicated city streets and maintenance is solely the responsibility of the property owner.

(b) If the director of planning does not approve the designation of the drives as *condominium* drives, the applicant may appeal the decision to city council as part of the plat approval process.

(c) Proposed *condominium* drives shall be located within access/fire lane/utility easements as determined necessary by the director of engineering and fire marshal.

(d) *Condominium* drive names shall be approved by the director of engineering.

(e) Additionally, the city attorney shall review and approve the *condominium* documents associated with any proposed development that will include *condominium* drives.

Potential Problems

TUCA requires same treatment as physical identical projects

Both of these approach create condo specific rules unless the rules also apply to residential subdivision, they do not comply with TUCA

Any rule requiring local review of Condo Declaration violates TUCA on its face.



Sample Approach-Condos as Multifamily

Most City codes only mention condominiums in definitions:

<u>Condominium.</u> A form of property ownership providing for individual ownership of space in a structure or complex, and which may be combined with an individual interest in the land, other parts of the structure/complex, and shared facilities in common with other owners.

And then because not treated as subdivision, captured by multifamily:

<u>Multifamily.</u> The use of a single lot or parcel for three or more dwelling units regardless of whether those dwelling units are attached within one structure or detached in multiple structures.

In an effort to follow TUCA, treat all condos as apartment building.

These are not the same!



Treating all Condos as Multifamily

What happens when single family detached condominiums treated like multifamily apartment?

- Process is not the same—Site Plan vs. Subdivision
 - Different rules apply
- Infrastructure is not the same—Private vs Public
 - Streets are narrow, fire lanes often on both sides
 - Private water and wastewater, no city maintenance
- Permitting is different—CO is required for whole project.
- Master meter for entire project
 - Impact fees are different—they potentially pay less.
 - Customer relationship is different

Long term considerations

Condo unit owners think they bought a house.

 Contact the city for a permit for a fence, shed, or other accessory structure.

With master meters, very little relationship with condo unit owners

 Condo unit owners don't always receive the same city communications

Maintenance of private infrastructure will be costly

 Condo unit owners may not understand future assessments



Require condo projects to plat

Adopt Development Plats

 Adopt nonsubdivision regulations for condo products that achieve same result.



Subdivision Plat

- •If creation of certain condominium units is a subdivision of land, just make them plat.
- •Would amount to equal treatment and remove some of the issues discussed above.
- •Challenges to this approach:
 - Process doesn't match. Platting is first step in development. Condo units created after initial plat, so would have to replat?
 - Subdivision regulations aren't written for condo units
 - Public roads generally cannot bisect a single lot
 - All regs written for lots, instead of units.

Development Plats

- •Subchapter B of Chapter 212 of Local Government Code
- •Requires a Development Plat for any new construction or the enlargement of any exterior dimension of any building, structure, or improvement.
- •Provides avenue to apply subdivision regulations to condo projects
- •Challenges to this approach--
 - Has to be adopted by City Council
 - Condos may still not be treated exactly the same.

Adopt Regulations for End Product

- •Similar to creating a zoning category
- •Instead of making the rules specific to condominiums, adopt regulations for the high density product desired. For example:
 - Minimum lot or unit size
 - All Single family detached must have meter
 - Require private drives to match streets
- •Challenges to this approach--
 - Requires extensive revisions to the code
 - Have to be careful not to make condo specific regulations

Conclusions

Condos are useful tools

- TUCA allows FULL municipal regulation of condos
- Regulating condos requires case-by-case analysis
- □No simple one-size fits all solution



Chapter 28 - SUBDIVISIONS AND SITE DEVELOPMENT

Footnotes:

State Law reference— Regulation of subdivision and property development, V.T.C.A., Local Government Code, ch. 212.

ARTICLE 28.02 - SUBDIVISION ORDINANCE

Footnotes:

--- (2) ----

State Law reference— Regulation of subdivision and property development, V.T.C.A., Local Government Code, ch. 212; extraterritorial jurisdiction of municipalities in counties that regulate subdivisions, V.T.C.A., Local Government Code, § 242.001; extension of subdivision rules to extraterritorial jurisdiction, V.T.C.A., Local Government Code, § 212.003; recording of plats, V.T.C.A., Property Code, § 12.002.

Sec. 28.02.001. - Adopted.

The subdivision ordinance, Ordinance No. 2019-29, adopted by the city on September 10, 2019, as amended, is included at the end of this chapter as exhibit A. Due to the nature of the subdivision ordinance and the technicalities involved in adopting or amending it, such ordinance is printed herein as enacted, with only nonsubstantive formatting and style changes. Capitalization, punctuation and numbering of articles, sections and subsections have been retained as enacted. Subsequent amendments will be inserted in their proper place and denoted by a history note following the amended provisions. The absence of a history note indicates the material is unchanged from the original. Obviously misspelled words have been corrected without notation. Any other material added for purposes of clarification is enclosed in brackets. (Editorially supplied)

ARTICLE 28.03 - PARKLAND DEDICATION AND PARK DEVELOPMENT

Footnotes:

--- (3) ---

Editor's note—<u>Ord. No. 2021-04</u>, § 2, adopted January 12, 2021, repealed the former article 28.03, §§ 28.03.001—28.03.010, and enacted a new article 28.03 as set out herein. The former article 28.03 pertained to parkland dedication and derived from Ord. No. 1512.3, adopted January 10, 2007.

Sec. 28.03.001. - Title.

This article shall be known and cited as the parkland dedication and park development ordinance.

(Ord. No. 2021-04 , § 2, 1-12-2021)

Sec. 28.03.002. - Purpose.

The purpose of this section is to provide parks, open spaces, and trails that implement the parks, recreation, and open space master plan. The City of Dripping Springs City Council has determined that parks, open spaces, and trails are necessary for public welfare, and that the adequate procedure to provide these community amenities is by integrating standards into the procedures for planning and developing property.

This article is enacted to enable the city to gain and maintain the following attributes of parkland:

- (1) Enhancement of the community's quality of life, which embraces its livability, aesthetic integrity, and se *Item 6.*
 - (2) Ecological and environmental preservation, biodiversity, improving water quality, air cleansing, aquifer recharge, and flood control;
- (3) Scenic vistas unique to the Texas Hill Country that engage the park user in leisure recreation;
- (4) Facilities for active recreation and sporting events;
- (5) Places for engaging in passive recreation;
- (6) Economic contribution of parks and open spaces to the vitality of the city;
- (7) Promotes cultural, artistic and sporting endeavors;
- (8) Meets the goals of the comprehensive plan and the parks, recreation, and open space master plan;
- (9) Provision of a fair and equitable park system, utilizing park amenities that are sustainable, durable and of high quality; and
- (10) Provision or enhancement of park connectivity throughout the city via linear parkland and greenways that create unimpeded wildlife corridors as well as house multimodal pedestrian access trails.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.003. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

<u>Active recreation</u>. Public recreational areas that accommodate youth and adult level team sports (baseball, football, soccer, lacrosse, etc.) and provide practice/game fields for organized recreational leagues.

<u>Applicant</u>. A person or entity who submits to the City of Dripping Springs an application for an approval required by this article. To be qualified as an applicant under this article, the person or entity must have sufficient legal authority or proprietary interests in the land to commence and maintain proceedings under this article. The term shall be restricted to include only the property owner(s), or a duly authorized agent and representative of the property owner. In other jurisdictions, the term is sometimes referred to as the "developer", "subdivider", "builder", or other similar title.

<u>*City*</u>. The City of Dripping Springs, an incorporated municipality located in Hays County, Texas. Unless otherwise stated, the term includes both the city limits and the extra-territorial jurisdiction (ETJ).

<u>Concept plan</u>. A drawing of the overall conceptual layout of a proposed development, superimposed upon a topographic map which generally shows the anticipated plan of development, and which serves as a working base for noting and incorporating suggestions of the city's administrative officers, the PRC, the P&Z, the city council, and others who are consulted prior to preparation of the preliminary plat. In other jurisdictions, the term is sometimes referred to as a "preliminary site plan" or a "land study."

<u>Development</u>. The construction, reconstruction, conversion, structural alteration, relocation, renovation, or enlargement of any structure on land. The term also includes any mining, excavation, landfill, or land disturbance.

<u>Dwelling unit (DU or DUs)</u>. Any building, structure, or portion of a structure, which is designed, used, or intended to be used, for human occupancy as primary living quarters.

<u>ETJ</u>. The extraterritorial jurisdiction of the city.

9/24/21, 9:25 AM

Dripping Springs, TX Code of Ordinances

<u>Fee-in-lieu</u>. A developer may request, and the city may approve, an option whereupon, developers may be require <u>Item 6.</u> contribute cash instead of parkland dedication and parkland development and is commonly referred to as "fee-in-lieu". In such instances, the fee-in-lieu amount required is equal to the fair market value of the required parkland acreage for dedication and the cost for park development as designated in the Methodology section of this article.

<u>General parks plan</u>. Statement of the suitability of the parkland in meeting the criteria for parks as outlined in this article and a detailed description of any proposed improvements shall be in accordance with recommendations as outlined in the city's Code of Ordinances, as well as the parks, recreation, and open space master plan.

<u>Open space</u>. Within parkland, open space is parkland that is to be kept essentially unimproved and dedicated for the public or private use. The primary functions of this type of parkland are the protection of hill country scenic vistas, protection of quiet rural lifestyle, and conservation of native wildlife. Open space may feature, but is not limited to, minimal improvements such as walking trails, picnic sites, and/or benches. Open space may include, but is not necessarily required to include, land restricted by conservation easements.

<u>*Park fund*</u>. The fund in which fee-in-lieu and other park funds are deposited and which can only be used for the development, maintenance, or acquisition of parks, trails, and related facilities.

Parkland. Platted tract of land designated and used for recreation or open space.

<u>Parks and recreation commission (PRC)</u>. Citizens' advisory body appointed by the city council which acts generally in an advisory capacity to the city council in the acquisition, development, utilization, operation, improvement, equipment and maintenance of all park playgrounds and recreational areas owned or controlled by the city. Described more fully in <u>article</u> <u>2.04</u>, Boards, Commissions and Committees, division 3, Parks and Recreation Commission.

<u>Parks, recreation, and open space master plan</u>. Guiding document for establishing the framework of a long-term, successful park system for the City of Dripping Springs. The document is updated every five years to ensure that the park system remains viable for the citizens of the city and its ETJ.

Park service area. In accordance with the parks, recreation, and open space master plan, the City of Dripping Springs and ETJ are sectioned off into service areas. These service areas provide guidance for development of the park system.

<u>Park trail</u>. Multiple-purpose trails located within parks. The focus of the trail is on recreational values and harmony with the surrounding natural environment. Trails shall accommodate a variety of activities, including pedestrians and/or bicyclists.

<u>Private park/recreation facility</u>. Private park areas and recreational facilities are privately owned yet make a contribution to the overall public park and recreation system because they contribute to the leisure activities of the neighborhood or park service area in which they are located.

<u>Rule of interpretation</u>. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below but are defined elsewhere in the Code of Ordinances or other documents as adopted by the city, 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). The word "shall" is always mandatory, while "may" is merely directory. Headings and captions are for reference purposes only. Any reference to the city parks plan, city open space plan, or general parks plan in this or any other ordinance or document is synonymous with the parks, recreation, and open space master plan.

(Ord. No. 2021-04, § 2, 1-12-2021)

Sec. 28.03.004. - Applicability and parks, recreation, and open space master plan.

This article applies to all property within the city limits and the extraterritorial jurisdiction (ETJ). This article applies to applications for which city approval is sought under the city's subdivision ordinance and site development ordinance, as may be amended. The costs associated with development and maintenance of neighborhood and community parks should be borne by the landowners of residential property, who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities. The requirements within the ordinance are adopted to affect the purposes stated above.

- (1) The guiding document for all park and recreation development will be the most current parks, recreation, and open space master plan and any updates to the plan which occur from time to time, based on input from the community and approval by the City Council of Dripping Springs. Determination of acceptability of a proposed neighborhood park dedication and development and/or for a proposed community park dedication and development or cash-in-lieu is based upon the City of Dripping Springs Parks, Recreation, and Open Space Master Plan, as may be amended from time to time.
- (2) Neighborhood parks are the cornerstone of the park system and serve as the recreational and social focus of the neighborhood. Focus is on informal active and passive recreation. These parks are typically one-quarterto one-half-mile distance from all areas it serves and uninterrupted by non-residential roads and other difficult barriers.
- (3) Community parks are designed to serve both active and passive leisure needs of residents. Most users come from surrounding areas larger than what a neighborhood park typically serves. Community parks are located within park service areas established by the city.
- (4) Existing parks in Dripping Springs currently serve the needs of several neighborhoods located within the city limits and in the ETJ and are located within a one-half- to five-mile radius (approximate) of Dripping Springs residents and ETJ users. Founders Memorial Park and Sports and Recreation Park provide amenities that are typical in community parks, providing services to users in the city and ETJ alike due to the absence of community park facilities within the ETJ. Together, neighborhood parks and community parks can meet more of the recreational needs of residents.
- (5) The methodology is the formula that is used to determine the requirement for acreage to be dedicated per dwelling unit, fees required in lieu of the dedication of parkland, number of acres required per dwelling unit to meet the criteria of parkland dedication, as well as the park development fee.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.005. - Exemptions for certain projects.

- (a) <u>Statutory exemptions</u>. Properties that are subdivided for residential use where the lots are greater than five acres, and no other public improvements are required, are not subject to the required dedication of parkland or open space, but are still required to pay the park development fee unless otherwise exempted.
- (b) <u>Small projects</u>. Subdivisions and site developments generating five dwelling units or fewer are exempt from the dedication requirements in this article. Applicants may not attempt to utilize this exemption by separating the project into a series of smaller projects. The exemption authorized by this section may only be utilized once and may not apply to subsequent divisions of the property. This exception applies to replats that do not increase the dwelling units for the subdivision by five or more. Such projects are still required to pay the park development fee unless otherwise exempted.
- (c) <u>Historic district</u>. Properties located within the historic district are exempt from parkland dedication requirem 225

unless more than 25 dwelling units are proposed, but are still required to pay the park development fee ur *Item 6.* otherwise exempted.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.006. - Parkland dedication and development methodology.

- (a) Parkland dedication and parkland development calculations.
- (1) For the purpose of this section, parkland dedication and parkland development calculations reflect the maximum possible land dedication, parkland development, and fee-in-lieu of land dedication allowable. The city, at its option, may reduce the required land dedication and fee-in-lieu of payment if other opportunities are deemed worthwhile and suitable for parks or trails in accordance with the parks, recreation, and open space master plan and allow the applicant to contribute to its proportional share of park and recreational facilities.
- (b) Basis for current level of service.
 - (1) Parkland dedication and park development fees are based on the current level of park service for the Greater Dripping Springs Area. This park service area is defined as the same geographic service area for the Dripping Springs Independent School District (DSISD). The dedication and fee requirements are subject to change whenever the parks, recreation, and open space master plan is updated, whenever the U.S. Census Persons Per Household or other population estimates are revised and/or in conjunction with annual changes in land values or costs for park development.
 - (2) According to the Dripping Springs Independent School District Demographic Update, which was completed in Spring 2019, and prepared by population and survey analysts, the number of households in the DSISD/City of Dripping Springs park service area is 13,701 ^A. According to the 2019 U.S. Census Bureau ^B, the average number of persons per owner occupied household in the Greater Dripping Springs Area is 3.03 persons per household (PPH) and is referred to as the dwelling unit or DU (Sec. <u>28.03.003</u> Definitions). The estimated population 2019 projection for the Drippings Springs Park Service Area is 41,514 ^C.
 - (3) <u>References for data</u>.
 - (A) The DSISD student projection for the 2020-2021 school year is 7,810 students per the Dripping Springs Independent School District Demographic Update Spring 2019. That same publication estimates that there is a weighted average of 0.57 students per single-family home. This projects to 13,701 homes in the Dripping Springs park service area.
 - (B) https://www.census.gov/quickfacts/fact/table/drippingspringscitytexas,US/PST045219
 - (C) 31,701 homes multiplied by 3.03 persons per household = 41,514 population.
 - (D) Source: City of Dripping Springs Parks, Recreation, and Open Space Master Plan 2014-2024.
- (c) Rationale for parkland dedication and park development fees.
 - (1)

Current Level of Service		
Population (City and ETJ)	41,514 (based on DSISD Service area)	
Total Existing Parkland	590.99 acres	
		226

24/21, 9:25 AM Dhpping	j Springs, TX Code of Ordinances				
Total Persons Per Acre	70 People	Item 6			
Land Dedication Requirements					
Persons per DU	3.03 (2019 Census)				
Calculation	41,514/590.99 = 70 people per acre of parkland; 70 people/3.03 PPH = 23.10 or 23 DU				
Dedication Criteria	1 acre of parkland/23 Dwelling Units				
Fee-in-Lieu of Land Requirements					
Average Cost per Acre	Market Rate, determined by an appraisal performed at the time of the request				
Dwelling Unit	Market Value Per Acre for each required acre of dedication (1 acre/23 DUs)				
Park Development Fee					
Cost of 50 Acre Park	\$6,739,129.00				
Number of persons per active recreation community parks	20,757				
Calculation	\$6,739,129.00/20,757.00 = \$324.00/person; \$324.00 x 3.03 PPH (City Council voted to lower the fee per dwelling unit by calculating 2 PPH as shown below)				
Fee Per Dwelling Unit	\$648.00				

- (2) The fee model for an active recreation park in Dripping Springs is based on a 50-acre park comparable to a community park as designed in the Dripping Springs, Parks, Recreation, and Open Space Master Plan.
- (3) The model estimates a development cost of \$6,739,129.00.
- (4) The park development budget is required to be equal to or greater than the park development fee required and must be approved by the parks and recreation commission and city council. The park development costs greater than the parkland development fee is not transferable to other development projects.
- (5) If the applicant's proposed development is in a park service area that identifies a future community or act

use park, the city may request that the applicant dedicate land for the park. In that case, an offset may *Item 6.* considered against the required fee-in-lieu of land required.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.007. - Dedication of public parkland required.

- (a) Residential dedication requirements.
 - (1) For projects where the use includes residential dwelling units, an applicant who subdivides or plats land under the city's subdivision ordinance, excluding replats, amending plats, and minor plats that do not increase the subdivision's density by more than five dwelling units, shall provide for the dedication or designation of land suitable for parkland and recreation purposes. If parkland is not dedicated at the time of platting, but would be required for a project as presented at site development, then parkland shall be dedicated as required in this article at the time of site development.
 - (2) Land dedicated as a requirement of this article shall be suitable for parkland and recreation purposes.
 - (3) The minimum acreage of public parkland required shall be as follows:
 - (A) One acre for each 23 dwelling units, or fraction thereof.
 - (B) Residential subdivisions with fewer than 23 dwelling units shall dedicate five percent of overall acreage of the property to be subdivided as public parkland.
- (b) The land to be dedicated shall form a single lot with a minimum of one acre required.
- (c) Exemptions.
 - (1) When the developer/subdivider is proposing to dedicate the required acreage to satisfy the public parkland dedication requirements, but not as a single lot, the parks and recreation commission may make a recommendation to city council to approve the parkland dedication if they find that it meets the intent of the code, and the proposed parkland lots have access from a public right-of-way.
 - (2) A developer shall make a financial contribution in accordance with <u>section 28.03.006</u>, and the city's adopted fee schedule, in lieu of dedication of public parkland when:
 - (A) No portion of the tract of land is located within the city limits; or
 - (B) The developer does not dedicate at least an acre of parkland and less than one acre of land would be required to satisfy the parkland dedication requirements.
- (d) The rate required for the financial contribution shall be in accordance with the adopted fee schedule in accordance with the methodology in <u>section 28.03.006</u>, provided herein. The fee shall be reviewed on annual basis to ensure accuracy and value.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.008. - Criteria for dedication.

- (a) Any land to be dedicated to meet the requirements of this section shall be suitable for public parks and recreational activities as determined by the city administrator or their designee, and comply with the following standards and requirements:
 - (1) The parkland lot shall be centrally located within the development, when practical.
 - (2) Where residential subdivision is proposed to be developed in phases, the parkland lot shall be located within the first phase of the development. If the required public parkland is proposed to be outside of the first phase, the first phase may be approved provided that fee-in-lieu of dedication is paid for the number of

dwelling units within that first phase. In this event, the fee paid may be credited toward the required parkland dedication fee for the subsequent phase(s) of the development.

- (3) The parkland lot shall have a minimum lot width and street frontage of 30 feet. When practicable, the parkland lot shall be a multi-frontage lot.
- (4) The parkland lot shall provide on-site parking or be located along a street where on-street parking may be accommodated on both sides of the street.
- (5) A minimum of 50 percent of the parkland lot shall not exceed a 20 percent grade. A slope analysis exhibit shall be provided to the city engineer.
- (6) Areas within the FEMA or calculated 100-year floodplain may be dedicated in partial fulfillment of the dedication requirement not to exceed 50 percent. When area within the floodplain is proposed to be dedicated, a minimum of two acres of land, and the frontage of the property where it is accessed from public right-of-way shall not be located within the FEMA or calculated 100-year floodplain.
- (7) Parkland lots with the following conditions shall not be accepted unless recommended by the parks and recreation commission, and approved by city council:
 - (A) The lot is primarily accessed by a cul-de-sac.
 - (B) The lot is hindered by utility easements or similar encumbrances that make development of the land unfeasible. This limitation does not apply to land encumbered solely by public utility easements required by the subdivision ordinance.
 - (C) The lot is encumbered by sensitive environmental species or habitat areas.
 - (D) The lot contains stormwater facilities. Where stormwater facilities are proposed, stormwater facilities must be designed as a park amenity, to include trails, benches, and opportunity for recreation.
- (8) A minimum of two-inch water service line and six-inch gravity wastewater service line shall be provided at one of the property lines in a location approved by the city engineer. This provision can be waived if water/wastewater is not within a reasonable distance from the property, as determined by the city engineer.
- (9) Sidewalks and trails shall be provided along all street frontages, and trails shall be provided in accordance with the master trails plan, as well as all criteria found in the city's subdivision ordinance or other city ordinances. Sidewalks required by other city ordinance such as at the time of platting or site development, will not be counted towards the required parkland dedication. Trails may be considered as part of required parkland dedication.
- (b) Alternative site and development standards.
 - (1) Alternative design standards for public parkland may be proposed and submitted to the planning and development department, provided the intent of the requirements of this section are met.
 - (2) Prior to submitting an application for development where alternative site and development standards are requested, the applicant shall complete the following:
 - (A) Provide a letter to the planning and development department that details the alternative design for parkland dedication and why it is equal to or better than the minimum standards; and
 - (B) Conduct a site visit with the planning and development department or their designee to review the proposal.
 - (3) The planning and development department shall review the alternative design based on section 28.03.007, Dedication of public parkland requirement, and section 28.03.008, Criteria for dedication, and present the alternative design to the parks and recreation commission for recommendation to city council for final

approval.

- (A) The parks and recreation commission shall recommend approval, approval with conditions, or disapproval of the request.
- (B) The city council shall approve, approve with conditions, or disapprove of such requests.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.009. - Amendments.

Any increase in density or modification to an approved parkland dedication plan and/or subdivision, or a modification that would have otherwise required more parkland to be dedication, shall be required to dedicate additional parkland in accordance with this article, pay fee-in-lieu, or apply for alternative site and development standards as if it were a new application. If a property owner is requesting to modify an approved parkland dedication plan, they shall submit a new application with the requested changes, an explanation regarding the reason for the change, and the proposed new plan, subject to review and decision by the appropriate board, depending on whether the amendment is considered minor or major, as defined in this section.

- (1) <u>Minor amendment.</u> A minor amendment is any change that would increase/decrease the approved parkland acreage by five percent of the overall required parkland acreage. Minor amendments are subject to review and final decision by the parks and recreation commission.
- (2) <u>Major amendment.</u> A major amendment is any change that would increase/decrease the approved parkland acreage by more than five percent of the overall required parkland acreage. Major amendments are subject to review and decision by the parks and recreation commission, and approval by city council.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.010. - Park development fee.

- (a) In addition to the dedication of public parkland or fee-in-lieu, a developer shall pay a park development fee to meet the need for the active recreation parks. According to the city's parks, recreation, and open space master plan, the city has two community parks, which are servicing the entire population as described in <u>section</u> <u>28.03.006</u>. The park development fee is meant to provide active recreation parks and sports field options, and/or provide trails that connect park users to the existing community parks.
- (b) The amount for the park development fee shall be in accordance with the adopted fee schedule and based on the analysis as explained in the methodology in <u>section 28.03.006</u>.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.011. - Fee-in-lieu of dedication.

- (a) When the city deems existing parkland to be of an insufficient quantity (in the park service area in which the development is located), or unacceptable, unavailable, or unsuitable based on the standards established by this article for park purposes, and subject to review by the city council, fee-in-lieu of land shall be paid into the "park fund" established by the city. Such money shall be paid in accordance with the methodology in section 28.03.006, as well as the criteria of this article.
- (b) The value of the parkland shall be calculated as the average estimated fair market value per acre of the land being subdivided within 24 months of application for plat or site development at the time of preliminary plat approval. The appraisal shall be performed by a State of Texas certified real estate appraiser, mutually agreed

upon by the city and the applicant and paid for by the applicant.

- (1) If the city deems it acceptable based on the circumstances, the applicant may dedicate, or designate parkland acreage combined with cash. The cash contributions shall be paid at or prior to the final plat or site plan approval, whichever is most applicable to the project.
- (2) Whether the city approves parkland dedication or elects to require fee-in-lieu thereof when the parkland dedication does not meet the requirements of this article, or a combination of both acceptance of parkland dedication and fee-in-lieu, shall be determined by consideration of the following:
 - (A) The natural features, access, and location of land in the subdivision available for dedication;
 - (B) The size and shape of the subdivision and land available for dedication;
 - (C) The compatibility of the parkland dedication with the city's parks recreation, and open space master park plan; and
 - (D) The location of existing and proposed park sites, trails and greenways.
- (3) If the applicant pays fee-in-lieu for parkland dedication and complies with this article with no dedication of parkland, the fee-in-lieu can be reviewed and approved by the city administrator without review of the parks and recreation commission. If any parkland is dedicated or the fee-in-lieu proposed is less than what is required, then the application shall be reviewed in accordance with this article.

(Ord. No. 2021-04, § 2, 1-12-2021)

Sec. 28.03.012. - Credit for private parks.

- (a) Where privately-owned and maintained parks or other recreation facilities with non-exclusive private amenities are proposed, the city administrator, after recommendation from the parks and recreation commission, and approval from city council, may grant a credit up to 25 percent of the required public parkland dedication amount and/or fee-in-lieu. The credit is not applicable to the park development fee.
- (b) Privately-owned and maintained parks or other recreational facilities shall meet the following minimum standards:
 - (1) The park or recreational facility shall have a minimum lot area of two acres.
 - (2) The park or recreational facility shall include the minimum number and type of facilities outlined in <u>section</u> <u>28.03.010</u>.
 - (3) The park or recreational facility shall comply with the parks, recreation, and open space master plan, and other applicable city regulations.
- (c) Privately-owned and maintained parks or other recreational facilities for a single-family, two-family, townhome, or detached multi-family shall be identified on the subdivision plat as a private open space lot.
- (d) Privately-owned and maintained parks or other recreational facilities shall be owned and managed by a mandatory homeowners association (HOA) or property owners association (POA), or similar permanent entity, and subject to restrictive covenants that state the following:
 - (1) The land shall be utilized for parkland or open space in perpetuity.
 - (2) Each property owner within the subdivision encumbered by the restrictive covenants shall be required to pay dues and/or special assessments for the maintenance of the private park or recreation facility.
 - (3) If the responsible agency dissolves, cannot fulfill its obligations or elects to sell, transfer, or otherwise divest itself of the land, the city shall have the right of first refusal on acquiring the property. If the city elects to acquire the land, said land shall be transferred at no cost to the city and in accordance with the city's

regulations on dedicating parkland.

(4) The cessation of the privately-owned and maintained park or other recreational facility shall be prohibited until such time as the declarant cedes control of the responsible agency to purchasers of properties within the subdivision, and then only upon amendment to the restrictive covenants approved by three-fourths of the members of the responsible agency.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.013. - Method of dedicating parkland.

- (a) Land to be dedicated for public parkland shall be identified on the preliminary plat; final plat; subdivision construction plans; and site plan, when applicable. When construction of park improvements and/or private parks is proposed, all amenities shall be identified on the subdivision construction plans or site plan, as applicable. Fiscal surety is the amount equal to the park improvement fee shall be provided prior to approval of subdivision construction plans or site development plan, as applicable, for the park improvements on public parkland.
- (b) Prior to acceptance of the public parkland, the following conditions shall be met:
 - (1) Land shall be in good condition, including the removal of all debris and dead plant materials, and utility services, sidewalks, and other public improvements installed. Any land disturbed by activities not related to park development shall be restored and the soil stabilized in a method approved by the city engineer in accordance with the requirements of this code.
 - (2) Park development fee shall be paid.
- (c) Prior to recordation of the final plat, the following conditions shall be met:
 - (1) Land accepted for dedication under the requirements of this section shall be conveyed by warranty deed, transferring the property in fee simple to the City of Dripping Springs, Texas, and shall be free and clear of any mortgages or liens at the time of such conveyance.
 - (2) A copy of the warranty deed and other parkland dedication documents, as outlined in the city's Code of Ordinances, shall be provided to the planning and development department prior to plat submittal.
 - (3) If property is accepted, the warranty deed shall be provided to the city council for acceptance.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Sec. 28.03.014. - Park funds.

- (a) <u>Parkland dedication fund.</u> For funds received for fee-in-lieu of parkland dedication, a separate fund entitled "park fund" has been created to hold in trust money paid to be used solely and exclusively for the purpose of acquiring and/or improving public parks, trails, and recreational lands, and shall not be used for maintaining or operating park facilities or for any other purpose.
- (b) <u>Park development fee fund.</u> The funds received as park development fees, the funds shall be expended on park maintenance, operation, acquisition, or improvements to park facilities.
- (c) The city council, based upon recommendation of the parks and recreation commission, shall determine whether there are sufficient funds to acquire public parkland and/or construct improvements. In making a determination for the acquisition of land, the conditions outlined in <u>section 28.03.007</u> shall be taken into consideration.

(<u>Ord. No. 2021-04</u>, § 2, 1-12-2021)

Land dedication of park trail corridors within parks shall be a high priority, in accordance with the most recently adopted parks, recreation, and open space master plan, the city's adopted trails plan, and the transportation master plan, as may be amended. Applicants are responsible for preserving the natural character of the trail corridors and dedicating the required right-of-way. Right-of-way dedication or easement size may vary due to the site's physical characteristics.

A partial reduction or complete fee waiver in the amount of the park development fee may be considered by city council, if the applicant proposes a plan to construct public park trails that will connect to the city-wide trails system in order to unite neighborhoods to all parks within the city and the ETJ to facilitate options for park access. If the park trail or any portion of the park trail is within areas shown on the city-wide trails plan, the applicant may be required to construct park trails or other park amenities and may choose to waive a portion of the required fee at the city's sole discretion. Information specific to the city-wide trails plan can be found in the adopted City of Dripping Springs City-wide Trails Plan. Prior to city council considering this proposal, the applicant shall provide a cost estimate, subject to approval by the by the city engineer, prior to being placed on a parks and recreation commission agenda for recommendation, and city council for final action.

(Ord. No. 2021-04, § 2, 1-12-2021)

Sec. 28.03.016. - Agricultural facility fee.

- (a) Use of fee.
 - (1) The ag facility fee imposed pursuant to the provisions of this article is limited to funding the acquisition, development, improvement and/or maintenance of community agricultural facilities as identified in the city's general plan as adopted by the city council and as may be amended from time to time. The city is authorized to make appropriations to one or more city funds to pay for agricultural facilities owned and operated by the city or a designated entity pursuant to an interlocal agreement.
- (b) Payment of fee or land dedication required.
 - (1) An applicant who subdivides or plats land under the city's subdivision ordinance (excluding replats that do not increase the subdivision's dwelling units by five or more, or plat amendments), as may be amended, shall provide for community agricultural facilities by one or a combination of more than one of the following means:
 - (A) Payment to the city of an Ag facility fee in accordance with the schedule of fees adopted by city council.
 - (B) Dedication of real property (in fee simple or through a perpetual public surface easement) to the city or an entity designated by the city for Ag facility related purposes.
- (c) <u>Dedication and/or improvement in lieu of fee.</u> In lieu of payment of all or a portion of the Ag facility fee or land dedication described in this section, the following may be accepted by the city council:
 - (1) <u>Dedication of improvements.</u> In lieu of payment of all or a portion of the Ag facility fee, improvements to an existing agricultural facility may be dedicated to the city for recreational purposes. Whenever a developer determines to dedicate improvements in lieu of payment of the Ag facility fee, a written application shall be made to the city administrator describing the improvements to be made to receive credit for the local Ag facility fee. The city administrator shall prepare a report to the city council regarding the proposed dedication of improvements.
 - (2) <u>Report to city council.</u> The report to the city council from the city administrator shall indicate whether the following requirements have been met and shall make a recommendation regarding the proposed dedicated by the p

of improvements:

- (A) The improvements to be dedicated are for a community agriculture facility identified in the city's general plan.
- (B) The improvements to be dedicated are valued at the same or more than the Ag facility fee or portion thereof which would otherwise be imposed on the development.
- (d) <u>Time of payment.</u> Fees required by this section shall be paid prior to approval of the final plat.
- (e) <u>Exemptions.</u> The following are exempt from the application of this section:
 - (1) Applicants developing subdivisions that allow residents to keep livestock and farm animals on individually owned, single-family residential lots in the subdivision.
 - (2) Applicants developing subdivisions that include agricultural facilities located in the subdivision that shall be available to residents of the subdivision.
 - (3) Applicants developing subdivisions that are for solely nonresidential uses.
 - (4) Applicants that are city, county, state or federal government agencies.
- (f) <u>Appeals.</u> Any person aggrieved by the computation of fees pursuant to this section shall have the right to appeal to the city council. The appeal shall be taken not later than 30 days from the date the person is informed of the computation of the fees under this section. Failure to appeal within the 30-day period shall be deemed a waiver of all rights of appeal under this section.

(Ord. No. 2021-04 , § 2, 1-12-2021)

ARTICLE 28.04 - SITE DEVELOPMENT

Sec. 28.04.001. - Title.

This article shall be commonly cited as the site development ordinance.

Sec. 28.04.002. - Purpose.

This article establishes a site plan review process for all proposed nonresidential and certain residential developments. Generally, this article applies to horizontal improvements necessary to develop a site, rather than the vertical improvements involved with erecting buildings. The purpose of the review is to ensure efficient and safe land development, harmonious use of land, compliance with the comprehensive plan, appropriate design standards, safe and efficient vehicular and pedestrian circulation, parking and loading, and adequate water supply, drainage and stormwater management, sanitary facilities, coverage, and other utilities and services.

Sec. 28.04.003. - Scope.

This article applies to all property within the incorporated municipal boundaries (i.e., city limits and the extraterritorial jurisdiction (ETJ)).

Sec. 28.04.004. - Site development permit required.

No development shall be undertaken on any land, tract, parcel, or lot within the corporate limits or ETJ of the city until a site development permit for said development has been obtained from the city. Exceptions to this prohibition are enumerated in section 28.04.008(b).

Sec. 28.04.005. - Exception.

This article does not apply to development authorized by the city pursuant to subdivision final plat and approved construction plan.

Sec. 28.04.006. - Definitions.

- (a) <u>Rules of interpretation</u>. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances ("Code"), 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.
- (b) Specific definitions.

<u>Applicant</u>. A person or entity who submits to the city an application for an approval required by this article. To be qualified as an applicant under this article, the person or entity must have sufficiently documented legal authority or proprietary interests in the land to commence and maintain proceedings under this article. The term shall be restricted to include only the property owner(s), or a duly authorized agent and representative of the property owner.

<u>Application</u>. A submission for a plan, plat, or permit under this article that includes all required documents and has been deemed administratively complete by the city.

<u>Board of adjustment</u>. The body appointed by the city council to grant variances, waivers, or special exceptions, as allowed by ordinance. In the event that such a body has not been appointed, the city council shall serve as the board of adjustment.

<u>City administrator</u>. The city's chief administrative officer, as appointed by the city council. For purposes of this chapter, the term also includes the deputy city administrator, or the city administrator's designee.

<u>City limits</u>. The incorporated municipal boundary of the city.

<u>Construction plan</u>. Detailed engineered drawings and accompanying text clearly describing public infrastructure improvements.

<u>Development</u>. The erection of buildings, roads, utilities, drainage improvements, or other structures. The term includes construction, excavation, dredging, grading, filling, and clearing or removing vegetation. Pruning, or other forms of general or regular maintenance of vegetation on developed property, shall not be considered development for purposes of this article.

Engineer. A person duly authorized under the provisions of the Texas Engineering Practice Act, as heretofore or hereafter amended, to practice the profession of engineering.

<u>*ETJ*</u>. The extraterritorial jurisdiction of the city, being that land not within the city limits, but land over which the city has jurisdiction by virtue of chapter 42 of the Local Government Code, as amended, and other applicable law.

<u>Filing</u>. The date on which an administratively complete application for a plan, plat, or permit is submitted to the city on a day or date on which it is accepting filing of such plans, plats, and permits.

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Impervious cover. Includes all roads, driveways, parking areas, buildings, decking, rooftop landscapes and other impermeable construction covering the natural land surface. Swimming pool surface water area for pools which discharge to the storm drainage system shall also be included. Water quality and detention basins, swales, and other conveyances for drainage purposes only shall not be calculated as impervious cover.

Lot. An undivided tract or parcel of land having frontage on a street and which is, or in the future may be, sold, conveyed, transferred, or improved, which is designated as a distinct and separate tract or parcel, and which is identified by a tract or lot number or symbol, or by metes and bounds.

Owner. Any person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent thereof, that has sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this article. In any event, the term "property owner" shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer, of land sought to be subdivided.

P&Z. The planning and zoning commission of the city.

Person. Includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and other legal entity.

<u>*Plan*</u>. For purposes of compliance with this article, the term refers to a site plan, as may be applicable.

Planned development districts (PDDS). A customizable zoning district, represented through an adopted development plan, per the regulations of this Code, which may provide for one or more main uses or structures on a single parcel or contiguous parcels of land controlled by a single landowner or development group, and which permits flexibility from specific Code provisions related to land uses, dimensional requirements, landscaping, design, and other similar regulations in return for assurances of a comprehensive plan for overall innovation and/or quality of development.

<u>Right-of-way</u>. Land occupied or intended to be occupied by street, crosswalk, railroad, road, electric transmission line or oil or gas pipe line, water main, sanitary or storm sewer main, or for other special use. Right-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use.

Site. An area of ground occupied or to be occupied by a structure.

Site development review committee. A group consisting of the city administrator or designee, the city engineer, building official, and the city planner.

Site plan. Detailed engineered drawings and accompanying text clearly describing the site development improvements.

Site development permit. The record of the approval of a site plan issued to an applicant with an approved site plan.

Small project. Those being 3,500 square feet in total cumulative area or less, or as determined by the city engineer or city administrator.

Soil tests. Percolation tests, soil boring profiles, geotechnical and geological tests and profiles, groundwater table tests, and any other tests which may be required by the county environmental health department, state agency, or the city.

Street. An improved surface within a right-of-way or easement, public or private, other than an alley, which has been dedicated, deeded, or granted an easement for public use and which affords primary vehicular access to abutting property. Includes the term "road" and "roadway."

Structure. Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground.

<u>Subdivider</u>. Any person or any agent thereof dividing or proposing to divide land so as to constitute a subdivision <u>Item 6.</u> term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.

<u>Subdivision</u>. Shall be defined as is set forth in the city subdivision ordinance, as may be amended.

<u>Surveyor</u>. A registered state land surveyor or a registered professional land surveyor, as authorized by the state statutes to practice the profession of surveying.

Tract. A defined area of land.

<u>Unit</u>. A physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the condominium declaration.

<u>Utility easement</u>. An interest in land granted to the city, to the county, to the public generally, and/or to a private utility corporation, which authorizes the installation or maintenance of a utility across, over, or under land, and which authorizes ingress and egress thereon with machinery and vehicles necessary for the maintenance of said utilities.

Sec. 28.04.007. - Enforcement; penalties.

- (a) Criminal penalty.
 - (1) A person who violates, causes, allows or permits a violation of a section of this chapter designated as an offense in subsection (c) of this section commits a misdemeanor offense. Each violation shall be punished by a fine not to exceed \$2,000.00 per violation if the violation is of a provision of this article that governs public health or sanitation. A violation shall be punished by a fine not to exceed \$500.00 per violation if the violation is of a provision of this article that does not govern public health or sanitation.
 - (2) Each day a violation of this chapter designated as an offense constitutes a distinct and separate offense.
 - (3) Violation of any of these sections is considered an offense:
 - (A) Section 28.04.004, site development permit required.
 - (B) <u>Section 28.04.013</u>, site plan requirements, city limits.
 - (C) <u>Section 28.04.016</u>, erosion control.
 - (D) <u>Section 28.04.017</u>, clearing and rough-cutting.
 - (E) Section 28.04.018, cuts and fills.
 - (F) <u>Section 28.04.020</u>, post-construction restoration plan.
- (b) Civil remedies.
 - (1) If any building, structure, or land is used, constructed, maintained, repaired, or altered, or any development is commenced or continued, in violation of this article, the city and its officers may institute any appropriate action to prevent, restrain, correct, or abate the violation, including all remedies available pursuant to state law.
 - (2) The city is authorized to seek civil penalties not to exceed \$100.00 per violation, with each day a violation of this article continues constituting a distinct and separate offense.
 - (3) The imposition of any penalty shall not preclude the city and its officers from instituting any other appropriate action to require compliance with this land development code and with administrative orders and determinations made pursuant to this article.
- (c) Administrative actions.

- (1) <u>Stop work orders</u>. When an appropriate authorized official of the city determines that there has been any material term, condition, requirement or agreement under this article, the person obtaining such approved permit shall be ordered by the city in writing to cease and desist from further development or construction mat alleged noncompliance until corrected by compliance.
- (2) <u>Withholding of other authorizations</u>. The city may refuse to grant development, construction, or occupancy approvals for improvements for a property that does not fully and completely comply with all terms and conditions of this article. Without limiting the type or number of approvals the city may withhold, the city is specifically authorized to refuse to grant site development permits, building permits, utility connections, and certificates of occupancy.
- (3) <u>Appeals</u>. Said person may appeal an administrative order to the city administrator by giving written notice. The city administrator shall hear the appeal within five business days of receiving such notice. Said person may appeal in writing a negative ruling by the city administrator to the city council, which shall hear the appeal at the next regular meeting following receipt of the notice so long as the appeal is received at least five business days before the next regular meeting. If an appeal is received within five business days of the next regular meeting, the appeal will be heard at the council meeting after the next regular council meeting.

Sec. 28.04.008. - Applicability.

- (a) <u>Approval requirements</u>.
 - (1) Site plan review and approval shall be required for all nonresidential and specified residential projects and any planned development district (PDD) or conditional use permit (CUP) public hearings may also be required, as set forth in these regulations.
 - (2) Building permits shall be required in the ETJ only in accordance with any applicable development agreements or other authorizations approved by the council that mandate building permits.
 - (3) No building permit shall be issued for any of the above developments until a site plan and all other required engineering or construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the city. The site plan review process shall include three steps:
 - (A) Pre-application conference;
 - (B) Site plan review; and
 - (C) Construction of the project after city approval of the required site plan and other associated plans, including engineering plans.
- (b) Exemptions. Site plan review shall not be required for the following:
 - (1) The cultivation of land for agricultural purposes, fence building or rebuilding.
 - (2) Street construction and maintenance projects that do not increase the impervious cover beyond that of the original street.
 - (3) Construction or reconstruction of duplex residential housing and associated buildings, drives, and other appurtenances provided:
 - (A) No more than one structure is constructed per legal lot;
 - (B) No proposed improvement is located in the 100-year floodplain;
 - (C) The city engineer has determined that the proposed improvement would not have an effect on the waterway; and

- (D) City erosion and sedimentation control regulations are complied with.
- (4) Structural repairs or replacements to existing structures.
- (5) Construction or reconstruction of barns, silos, livestock pens, sheds, and other agriculturally related structures.
- (6) Selective clearing of vegetation performed in conjunction with subdivision development, and in compliance with the permitting and platting requirements of the subdivision ordinance of the city.
- (7) Any site fully developed prior to the effective date of this article.
- (8) Any site for which a permit was issued under a previous version of this article.
- (9) Construction of a new public primary or secondary educational facility, or expansion thereof, located within the city's municipal boundaries (city limits and ETJ). This exemption shall apply only if the Dripping Springs Independent School District submits plans and specifications to the city for a courtesy review. DSISD is hereby requested to voluntarily comply with all site development rules and regulations promulgated by the city, to the extent reasonably possible. For purposes of city records, DSISD shall submit a letter notifying the city that they are proceeding with any such improvements described in the submitted plans.
- (10) Above-ground utility installations that are not located within critical water quality zones, buffer zones or the Edwards Aquifer recharge zone.
- (11) Single-family detached residential developments, unless the proposed subdivision will include a private amenity or facility comprised of one or more buildings, such as a private recreation or swimming facility or clubhouse or a golf course. Also, this exemption shall not apply if the proposed subdivision will have private (not public) streets. In these instances, site plan submission and approval is required for the private amenity or facility, the golf course clubhouse/hospitality area, and the gated entrances.
- (12) Construction projects by other political subdivisions, unless otherwise addressed above, including the state, county, and federal agencies are exempt from the site development ordinance. For city record purposes, such political subdivisions are required to submit engineering/construction plans to the city for a courtesy review.

Sec. 28.04.009. - Site plan submission; notices.

- (a) <u>Required submissions</u>. Plan submission shall be comprised of the items set forth below:
 - (1) An application form, in the format provided by the city, with notarized signatures of the owner.
 - (2) Filing fee.
 - (3) Verification that all taxes and assessments on the subject property have been paid.
 - (4) Digital copies of the application and site plan set shall be submitted in PDF format and be provided to the city via email, on a USB stick, on a CD or another method acceptable to staff.
 - (5) The plans shall include general layout for the required improvements, including water, wastewater, grading and storm drainage, streets, water quality, alleys, fire lanes and hydrants.
 - (6) One-half-sized copy to scale (11 inches by 17 inches) of the site plan or as requested by the city engineer.
 - (7) Landscaping and irrigation plans, the quantity of which shall be determined by the city administrator, and requests for any variances from the city's landscaping ordinance as applicable. For site development permit applications within the city limits, landscaping plans shall be submitted with the site development plan

application. For site development permit applications in the ETJ voluntarily complying with the city's landscaping ordinance, the applicant shall submit landscaping plans with the site development plan application.

- (8) Any additional information/materials, such as plans, maps, exhibits, legal description of property, zoning information (if in city limits), planned development district ordinance (if applicable), development agreement (if applicable) and information about proposed uses, as deemed necessary by the city administrator, in order to ensure that the written request is understood.
- (9) Lighting (illumination) plan and requests for any variances from the city's lighting ordinance as applicable. For site development permit applications in the ETJ complying voluntarily with the city's outdoor lighting ordinance, lighting plans shall be submitted with the site development plan application. If any site development permit applications for projects in the ETJ are seeking any variances to the site development ordinance, compliance with the city's outdoor lighting ordinance may be mandatory and lighting plans shall be submitted with site development permit application if required by the city.
- (10) A statement listing the utilities that will service the project and letters of service availability from all utility providers, including the city if applicable.
- (11) Record of approved variances needed for the development.
- (12) Any approved permits that are applicable to the site development application (i.e. driveway permit, TCEQ permit, utility provider permit, etc.).
- (13) A written narrative describing the project and how all portions of the site development application meet all requirements of this code.
- (b) <u>Incomplete submissions</u>. All required items and information must be received by the city administrator in order for a site plan submission to be considered an application that can be filed. Incomplete submissions will not be reviewed or filed until all deficient items or information has been received.
- (c) <u>Waivers</u>. Upon request by the applicant, the city administrator may waive requirements for certain information or tests if submittal of such information or test results is not necessary for the city's determination that the issuance of the site development permit for the intended purpose of the applicant would meet the standards and objectives of this article. Prior to making this determination the city administrator may consult with the city engineer.
- (d) Official filing date.
 - (1) For the purpose of these regulations, the "official filing date" shall be the date upon which a submission for approval for a site plan, that contains all required elements mandated by city ordinance, is deemed complete by the city administrator. To be considered complete, the application must contain all elements and information required by this article, including all related fees. It is only after the official filing date that any statutory period required for approval or disapproval of the plat shall commence to run. No application shall be deemed officially filed until the city administrator determines that the submission is complete and a certificate of completeness is issued by the city administrator. Failure by the city administrator to make a determination of incompleteness within ten calendar days following the date on which the submission was first received by the city, shall result in the submission being deemed complete, the submission becoming an application, and the "official filing date" shall become the 16th calendar day following initial receipt of the application by the city.
 - (2) <u>Submission timing</u>. A submission for completeness review of any plan shall only be accepted on Wednesdays from 9:00 a.m. to 12:00 p.m. If a submission occurs on a different day or time then it shall be considered

submitted for purposes of this section on the next Wednesday on which the city is open.

- (3) Site plan submissions that do not include all required information and materials designated under this article will be considered incomplete. Such incomplete plans shall not be accepted for official filing by the city, and shall not be scheduled for any action by the city until the proper information is provided to city staff.
- (e) <u>Notice of submittal</u>. Notification shall be provided in accordance with this subsection. Notice must be distributed no less than 15 days after an application has been filed with the city as described above. This notice shall be distributed as follows:
 - (1) Erection of weather-resistant signs on the property under application for the purposes of advertising said permit.
 - (A) The signs shall be provided by the city.
 - (B) Signs placed on the property involved must be within ten feet of any property line paralleling any established or proposed street, and must be visible from that street.
 - (C) All required signs shall remain on the property until final disposition of the permit request is determined.
 - (2) Notice of application shall be placed on the city website.
- (f) <u>Notice to P&Z and city council</u>. Notice of all filed site development permit applications shall be provided in writing by the city to all members of the city council and P&Z.
- (g) <u>Additional information</u>. The city's staff may require information and data other than that set out in this section for specific site plans. This information and data may include but is not limited to geologic information, water yields, flood data and hydrological studies, environmental information, traffic impact analysis, road capacities, market information, historic structure(s) and/or land, economic data for the proposed development, hours of operation, elevations and perspective drawings, lighting, and similar information. Approval of a site plan may establish conditions for construction based upon such information.

Sec. 28.04.010. - Evaluation standards.

- (a) The following criteria have been set forth as a guide for evaluating the adequacy of proposed development within the city or extraterritorial jurisdiction (ETJ), and to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances as applicable.
- (b) The city administrator shall review the concept plan or site plan for compliance with all applicable city ordinances and with the comprehensive plan; for harmony with surrounding uses and with long-range plans for the future development of the city; for the promotion of the health, safety, order, efficiency, and economy of the city; and for the maintenance of property values and the general welfare.
- (c) Site plan review and evaluation by the city administrator for projects located in the city limits shall be performed with respect to the following:
 - (1) The plan's compliance with all provisions of the zoning ordinance, planned development district ordinance, and development agreement when applicable, and other ordinances of the city.
 - (2) The impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.
 - (3) The relationship of the development to adjacent uses in terms of harmonious design, setbacks, maintenance of property values, and any possible negative impacts.
 - (4) The provision of a safe and efficient vehicular and pedestrian circulation system.
 - (5) The design and location of off-street parking and loading facilities to ensure that all such spaces are usable

and are safely and conveniently arranged.

- (6) The sufficient width and suitable grade and location of streets designed to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings.
- (7) The coordination of streets so as to arrange a convenient system consistent with the transportation plan of the city.
- (8) When applicable, the use of landscaping and screening to provide adequate buffers to shield lights, noise, movement, or activities from adjacent properties when necessary, and to complement and integrate the design and location of buildings into the overall site design. See <u>section 28.04.009(a)(7)</u> for applicability.
- (9) When applicable, exterior lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection upon adjacent properties. See<u>section 28.04.009(a)(9)</u> for applicability.
- (10) The location, size, accessibility, and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.
- (11) Protection and conservation of soils from erosion by wind or water or from excavation or grading.
- (12) Protection and conservation of watercourses and areas subject to flooding.
- (13) The adequacy of water, drainage, sewer facilities, solid waste disposal, and other utilities necessary for essential services to residents and occupants.
- (14) Consistency with the comprehensive plan.
- (d) Site plan review and evaluation by the city administrator for projects located in the extraterritorial jurisdiction shall be performed with respect to the following:
 - (1) The impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.
 - (2) When applicable through voluntary agreement, exterior lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection upon adjacent properties.
 - (3) Protection and conservation of soils from erosion by wind or water or from excavation or grading as it relates to water quality.
 - (4) Protection and conservation of watercourses and areas subject to flooding.
 - (5) When applicable through voluntary agreement or due to services requested of the city, the adequacy of water, drainage, sewer facilities, solid waste disposal, and other utilities necessary for essential services to residents and occupants.
 - (6) Any items agreed to by voluntary agreement with the property owner through a development or other [sic]

Sec. 28.04.011. - Approval process; modifications.

- (a) <u>Pre-application conference</u>. Prior to formal application for approval of any site plan, the applicant(s) shall request and attend a pre-application conference with the city administrator, the city engineer, and any other pertinent city official(s) in order to become familiar with the city's development regulations and the development process. At the pre-application conference, the developer may be represented by its land planner, engineer, and surveyor. The applicant shall inform the city if the developer plans to be represented by its legal counsel at any meeting at least five business days prior to the meeting.
- (b) <u>After a pre-application conference</u>. After a pre-application conference, the city shall issue an application authorization form of the pre-application conference that is valid for a period of 90 days. If a submission is nq

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deemed a complete application within that time period, an additional pre-application conference will be re *Item 6.* unless waived by the city administrator.

- (c) <u>City staff review</u>. Upon official filing of an administratively complete application for site plan approval, the city shall commence technical review of the development proposal by forwarding a copy of the application to site development review committee members, such as the city administrator, city engineer, city planner, building official, and any other pertinent city official(s). Development review committee members shall review the application and shall ascertain its compliance with these and other applicable city regulations. Following city staff review of the plan and supporting documents, and following discussions with the applicant on any revisions deemed advisable and the kind and extent of improvements to be installed, the city administrator shall take action on the administratively complete application within 30 days of filing.
- (d) Action by city administrator.
 - (1) The city administrator may:
 - (A) Deem the site plan approved;
 - (B) Deem the site plan approved with conditions;
 - (C) Deem the site plan denied.
 - (2) Any site plan that includes property that is within the historic district shall also be reviewed for compliance with any applicable historical regulations. Plans that include variance requests, or CUPs will not be filed until a written approval of any variance or CUP is received by the applicant and submitted to the city.
 - (3) The city engineer may waive a submittal requirement that the city engineer determines is not essential to demonstrate compliance with this code. A record of submittal requirements that are waived under this subsection shall be maintained.
 - (4) All plan applications that were disapproved by the city administrator or the site development review committee, shall be provided to the applicant with a written statement of the reasons for disapproval that clearly articulated the reason for disapproval including citation to the law, including a statue or city ordinance, that is the basis for the disapproval.
 - (5) If the applicant amends its filed plan application in response to the city's initial disapproval, the applicant may file its amended application at the city on a date or day on which the city is accepting amended filings. The city will then have up to 15 days to approve or disapprove the amended application. The city administrator may either: (A) approve plan if the response adequately addresses each reason for the disapproval; or (B) disapprove plan if the response does not adequately address each reason for disapproval or creates new reasons for a violation of a statute or city ordinance. Any disapproval shall include a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, including a statute or city ordinance, that is the basis for the disapproval. Any plan that is disapproved after the city has reviewed the response in the form of an amended application may be refiled at any time as a new site plan application.
- (e) <u>Revisions to approved plan</u>. Revisions to an approved site plan shall be processed in accordance with the above. Any revisions shall be treated as a new site plan application or site development permit and be reviewed as described above. The only difference between revisions to a site development permit or an approved site plan and a new site plan application shall be the fee if the revisions are determined to be minor deviations or design modifications as listed below. If any work is done in nonconformance with an approved site plan or site development permit, the new site plan fee shall apply to any application for revision.
- (f) <u>Revisions to site development permit</u>. The city administrator may waive the new site development fee in lieu

the amended site development fee when modifications to the approved site plan are minor deviations or a *ltem 6.* modifications as determined by the city administrator in consultation with the city engineer and city planner as appropriate. The city administrator shall make this determination based on the:

- (1) The impact of the revisions on neighboring properties, the public, or persons who will occupy or use the proposed development;
- (2) Extent of the revisions on the approved site plan;
- (3) The probable length of review needed by the city engineer and city staff; and
- (4) Any other factors directly related to the regulations applicable to the project. Any changes approved by the city administrator shall be in writing as an amended site plan as described above.

Sec. 28.04.012. - Plan duration.

- (a) <u>Generally</u>. The approval of a r site plan shall be effective for two years. If construction has not commenced within the effective period, then the approved plan shall be deemed to have expired and shall become null and void.
- (b) <u>"Year" defined</u>. A year shall mean a period of 365 calendar days. A year ceases on 12:01 a.m. on the 365th day following city approval of the plan.
- (c) Extensions.
 - (1) <u>Authorized</u>. Prior to the lapse of approval for a plan, the applicant may petition the city administrator, in writing, to extend the plan approval. Such petition shall be considered by the city administrator for administrative approval. One extension of one year in length may be granted, unless otherwise specified by ordinance or agreement. If no petition for extension of plan approval is submitted, then the plan shall be deemed to have expired and shall become null and void. A request for extension will only be considered if filed by the city prior to the expiration of the plan.
 - (2) <u>Determination</u>. In determining whether to grant a request for extension, the city administrator shall take into account the reasons for the lapse, the ability of the property owner to comply with any conditions attached to the original approval, and the extent to which development regulations would apply to the plan at that point in time. The city administrator shall either extend the site plan or deny the request, in which instance the originally approved plan shall be deemed null and void. The property owner must thereafter submit a new plan application for approval, and shall conform to the regulations then in effect.

Sec. 28.04.013. - Site plan requirements—City limits.

- (a) <u>Applicability and purpose</u>. Submission of a site plan and city approval of a site development permit is required as stated above. The purpose of the site plan approval is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction. Approval of the site plan, landscape plan (if applicable), and engineering plans is required prior to site construction and release of any building permits.
- (b) <u>Area in site plan</u>. When the overall development project is to be developed in phases, the site plan area shall include only the portion of the overall property that is to be developed or constructed. Any application for a phased site plan shall include an overall plan for the entire property, and each phase shall be required to site plan individually as they develop. The overall plan shall show how the site will work, including driveways, internal streets and fire lanes, including traffic circulation, utility locations, etc.
- (c) <u>Submission requirements</u>. Submission of an application for a site development permit approval shall be don

accordance with this article. The site plan shall be prepared at a scale no smaller than one inch equals 100 *Item 6.* and on sheets 22 inches by 34 inches, and it shall clearly show in detail how the site will be constructed such as paving, buildings, landscaped areas, and utilities. The site plan shall include but not be limited to the following:

- (1) A title block within the lower right-hand corner of the site plan with the proposed name of the project or subdivision, the name and address of the owner and the land planner, engineer, architect or surveyor responsible for the plan, the scale of the drawing, both written and graphic scale, the date the drawing was prepared, total site acreage, and the location of the property according to the abstract and survey records of the county;
- (2) A vicinity or location map that shows the location of the proposed development within the city and in relationship to existing roadways;
- (3) The most current property plat or boundary survey limits of the tract and each proposed lot or unit, and scale distances with north clearly indicated;
- (4) The names of adjacent additions or subdivisions, or the name of the owners of record and recording information for adjacent parcels of unplatted land, including parcels on the other sides of roads and creeks;
- (5) The existing zoning and existing and proposed uses on adjacent land; the location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; driveway locations; any existing easements, with recording information; existing buildings; railroad rights-of-way; topography with contours at two-foot intervals with existing drainage channels or creeks, including the 100-year floodplain, if applicable; any other important natural features such as rock outcroppings, caves and wildlife habitats; and all substantial natural vegetation;
- (6) Proposed strategies for tree preservation, showing individual trees or tree masses that will be preserved, and the techniques that will be used to protect them during construction;
- (7) The layout and width, including right-of-way lines and curblines, of existing and proposed thoroughfares, collector streets and intersections, and specific configuration of proposed streets, lots and blocks, proposed driveways, showing driveway widths and distances between driveways, and proposed median openings and left turn lanes on future divided roadways. Existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings;
- (8) Specific locations and footprints of buildings, including but not limited to proposed nonresidential and residential densities; building heights; square footages, which for multi-tenant or multi-purpose buildings must show square footage for each intended use; massing, orientation, loading and service areas, including proposed screening, recycling containers, compactors and dumpster enclosures, including proposed screening, pedestrian walkways, and parking areas including parking ratio calculations; any proposed sites for parks, schools, public facilities, public or private open space; floodplains and drainageways; all proposed and existing utilities and easements; drainage structures; retention/detention ponds with proposed aesthetic treatments; screening walls; fences; signage, if applicable; fire lanes and fire hydrants; lighting, if applicable; visibility easements; and other pertinent development-related features;
- (9) If required by staff, a landscape plan showing turf areas, tree types and sizes, screening walls, ornamental plantings, planting schedule, including species, planted height, spacing, container and caliper size, numbers of each plant material, any existing wooded areas, trees to be planted, and irrigation plans, if required;
- (10) Complete erosion and sedimentation control plan as required by section 28.04.016.
- (11) Any provisions related to a development agreement or planned development district ordinance.
- (d) Conformance to requirements. Provision of the above items shall conform to the principles and standards of

this article and the comprehensive plan. To ensure the submission of adequate information, the city is here *Item 6.* empowered to maintain and distribute a separate list of specific requirements for site plan review applications. Upon periodic review, the city administrator shall have the authority to update such requirements for site plan and development review application forms. It is the applicant's responsibility to be familiar with, and to comply with, these requirements.

- (e) <u>Effect of review</u>. Approval of the site plan shall result in the issuance of a site development permit. The permit shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained, such as engineering plans, landscape plan, building facade plans, and building permits.
- (f) <u>Validity</u>. The approved site plan shall be valid for a period of two years from the date of approval.

Sec. 28.04.014. - Site plan requirements—ETJ.

- (a) <u>Applicability and purpose</u>. Submission of a site plan and city approval of a site development permit for a project located in the ETJ is required as stated above. The purpose of the site plan approval is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction. Approval of the site plan and engineering plans is required prior to site construction. Landscape and lighting plans shall be submitted if applicable through voluntary agreement to comply by the property owner.
- (b) <u>Area in site plan</u>. When the overall development project is to be developed in phases, the site plan area shall include only the portion of the overall property that is to be developed or constructed. Any application for a phase site plan shall include an overall plan for the entire property.
- (c) <u>Submission requirements</u>. Submission of an application for a site development permit approval shall be done in accordance with this article. The site plan shall be prepared at a scale no smaller than one inch equals 100 feet and on sheets 22 inches by 34 inches, and it shall clearly show in detail how the site will be constructed such as paving, buildings, landscaped areas, and utilities. The site plan shall include but not be limited to the following:
 - (1) A title block within the lower right-hand corner of the site plan with the proposed name of the project or subdivision, the name and address of the owner and the land planner, engineer, architect or surveyor responsible for the plan, the scale of the drawing, both written and graphic scale, the date the drawing was prepared, total site acreage, and the location of the property according to the abstract and survey records of the county;
 - (2) A vicinity or location map that shows the location of the proposed development within the ETJ and in relationship to existing roadways;
 - (3) The most current plat or boundary survey limits of the tract and each proposed lot, and scale distances with north clearly indicated;
 - (4) The names of adjacent additions or subdivisions, or the name of the owners of record and recording information for adjacent parcels of unplatted land, including parcels on the other sides of roads and creeks;
 - (5) The location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; any existing easements, with recording information; existing buildings; railroad rights-of-way; topography with contours at two-foot intervals with existing drainage channels or creeks, including the 100-year floodplain, if applicable; any other important natural features such as rock outcroppings, caves and wildlife habitats; and all substantial natural vegetation;
 - (6) The layout and width, including right-of-way lines and curblines, of existing and proposed thoroughfares, collector streets and intersections, and specific configuration of proposed streets, lots and blocks, proposed.

driveways, showing driveway widths and distances between driveways, and proposed median opening *Item 6.* left turn lanes on future divided roadways. Existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings;

- (7) Specific locations and footprints of buildings, including but not limited to proposed nonresidential and residential densities; square footages, orientation, loading and service areas, including pedestrian walkways, and parking areas; floodplains and drainageways; all proposed and existing utilities and easements; drainage structures; retention/detention ponds with proposed aesthetic treatments; fences; signage, if applicable; fire lanes and fire hydrants; lighting, if applicable; visibility easements; and other pertinent development-related features.
- (8) Complete erosion and sedimentation control plan as required by section 28.04.016.
- (d) <u>Conformance to requirements</u>. Provision of the above items shall conform to the principles and standards of this article. To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for site plan review applications. Upon periodic review, the city administrator shall have the authority to update such requirements for site plan and development review application forms. It is the applicant's responsibility to be familiar with, and to comply with, these requirements.
- (e) <u>Effect of review</u>. Approval of the site plan shall result in the issuance of a site development permit. The permit shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained, such as engineering plans, landscape plan, building facade plans, and building permits.
- (f) <u>Validity</u>. The approved site plan shall be valid for a period of two years from the date of approval.

Sec. 28.04.015. - Variances.

- (a) <u>Presumption</u>. There shall be a presumption against variances. However, if the applicant requests a variance in writing, the site development review committee may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. For any variance to apply to a site plan, the variance must be approved prior to submitting for a site plan.
- (b) <u>Identification</u>. All variances requested for a project must be identified during the site plan approval process. Any requested variance shall be submitted for approval and complete the approval process prior to submission for site plan approval.
- (c) <u>Conditions</u>. In granting a variance, the site development review committee shall prescribe upon the applicant only conditions that it deems necessary to or desirable in the public interest.
- (d) <u>General criteria</u>. In making the findings required below, the site development review committee shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, when applicable, the number of persons who will reside or work in the proposed development, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.
- (e) <u>Required findings</u>. No variance shall be granted unless the site development review committee finds that all of the following provisions are met, and the burden shall be on the developer to show that the following provisions are met:
 - That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of this land;
 - (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
 - (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injuriou

other property in the area; and

- (4) That the granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this article.
- (f) <u>Pecuniary hardship</u>. Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.
- (g) <u>Restrictions</u>. When the site development review committee determines that a variance is warranted, the variance permitted shall be the minimum departure from the terms of this article necessary to avoid such deprivation of privileges enjoyed by such other property to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences.
- (h) <u>Adequate basis for variance</u>. It shall be an adequate basis for granting a variance that doing so will enable the applicant to create additional open space, reduce impervious cover, preserve trees, maintain critical environmental features, ensure more wildlife preservation, or bring nonconforming structures (including signs) into compliance with current regulations. This section is designed to achieve a more favorable outcome for the general public than would be possible complying with the strict mandates of this article.
- (i) <u>Variances for projects in ETJ</u>. Should an applicant apply for any variances for site development applications for projects located in the ETJ, compliance with the city's outdoor lighting ordinance may be a condition of an approved variance.
- (j) <u>Recommendation by site development review committee</u>. The site development review committee shall take action on a proposed variance. At the recommendation of the site development review committee, variances may be referred to the planning and zoning commission for their consideration and recommendation. Recommendations of the planning and zoning commission on each item shall be made and provided to the city council for final approval.
- (k) <u>Appeals</u>. The applicant may appeal the site development review committee's decision to the planning and zoning commission. The planning and zoning commission shall hold a public hearing for consideration of the appeal after completion of public notice procedures described in this article.
- (I) <u>Record</u>. Such findings of the site development review committee shall be kept on file at city hall in accordance with the city's record retention policies. Shall a decision be appealed to the P&Z, the finding shall be incorporated into the official minutes of the P&Z meeting at which the variance is considered. Variances may be granted only when in harmony with the general purpose and intent of this article so that the public health, safety, and welfare may be secured and substantial justice is done.

Sec. 28.04.016. - Erosion control.

- (a) The purposes of controlling erosion and sedimentation during the construction stages in a site development are to minimize nuisances on adjacent properties, avoid siltation and water quality degradation of streams, and preserve the natural and traditional character of watercourses running through the area.
- (b) The developer shall submit as a part of the final site development plans a complete erosion and sedimentation control plan specifying the type, physical details, installation procedures, and location of controls to be used, the timing in relation to each stage of the construction sequence, maintenance of controls, and plans and techniques to be used for revegetation and slope stabilization, as specified in this article.
- (c) The accepted guides for preparing control plans are the City of Austin Erosion and Sedimentation Control Manual, and TCEQ TPDES TXR150000. Other generally accepted or innovative and effective engineering procedures may be used in conjunction with, or instead of, those prescribed in this section if approved by the

city engineer.

Sec. 28.04.017. - Clearing and rough-cutting.

- (a) <u>Prohibition</u>. No right-of-way clearing or rough-cutting shall be permitted prior to the issuance of a site development permit by the city. Limited clearing for soil testing and surveying shall be allowed.
- (b) <u>Inclusion in plan</u>. Clearing for the temporary storage of spoil or construction equipment, or for permanent disposal of fill material or spoils, shall be so designated on the submitted site plan. The developer must provide erosion and sedimentation controls and the continuing maintenance thereof acceptable to the city engineer.
- (c) Initial brush removal.
 - (1) Applicants 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. Applicants may exercise this option only by utilizing rubber-tired equipment for brush removal.
 - (2) Prior to site plan approval, owners may neither remove any tree (other than cedar trees) with a trunk having a diameter greater than six inches measured four and one-half feet above the base (ground elevation) of the tree, nor materially alter the existing drainage patterns, prior to receiving city approval for site plans. Owners shall ensure that as much area as possible is left undisturbed for as long as reasonably possible.
 - (3) Agricultural and farming operations on land subject to the Ag exemption for tax purposes are exempt from the restrictions of this section.
- (d) <u>Time period before final surfacing</u>. The length of time between rough-cutting and final surfacing shall not exceed 12 months.
- (e) <u>Vegetation in water quality buffer zone</u>. Vegetation within the water quality buffer zone shall not be disturbed except for purposes consistent with development activity permitted by this article.

Sec. 28.04.018. - Cuts and fills.

- (a) No fill shall exceed a maximum of six feet of depth, except as approved by the city engineer, in the areas designated as permanent on-site spoils disposal sites; provided, however, that fill placed under foundations with sides perpendicular to the ground, or with pier and beam construction, need not comply with this requirement.
- (b) No cut on any site shall be greater than six feet, unless approved by the site development review committee, except for structural excavation.
- (c) All new drainage channels on the site shall be designed to minimize potential erosion. All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading. All new drainage channels shall be constructed in accordance with approved site plan.

Sec. 28.04.019. - Sidewalks.

- (a) Purpose and development review committee.
 - (1) Pedestrian concrete walkways (sidewalks) shall be required for all residential and nonresidential developments within the city limits and ETJ. Sidewalk width and location shall be in accordance with the transportation master plan (TMP).
 - (2) When not defined by the TMP the following shall apply:
 - (A) For commercial site developments: A minimum five-foot sidewalk shall be provided within adjacent street right-of-way (ROW) along the entire frontage of the property.



- (B) For residential subdivisions: A minimum five-foot sidewalk shall be required within ROW on both significant the development.
- (3) Development review committee. A group consisting of the city administrator or designee, the city engineer, building official, and the city planner. Also known as the site development review committee.
- (4) Sidewalk compliance is required prior to a Site Plan being approved whether sidewalks were approved and constructed at the time of platting or upon site plan application.

(b) <u>Requirements</u>.

- (1) Sidewalks shall be constructed in compliance with the Dripping Springs Technical Criteria Manual (DSTC).
- (2) Sidewalk plan. A sidewalk plan shall be required on all construction plans and site development plans. Plans shall show the location of all proposed sidewalks and shall state at what stage of the project they will be constructed. If compliant sidewalks have already been constructed, the constructed sidewalks shall appear on all construction plans and site development plans.
- (3) Sidewalk alignment. Sidewalk alignment shall comply with that set forth in the TMP with the following exceptions:
 - (A) A sidewalk shall be allowed to meander within the ROW or an easement upon approval by the site development review committee.
 - (B) Routing to clear poles, trees, or other obstacles shall be subject to approval by the site development review committee.
 - (C) When not defined by the TMP, sidewalks shall be constructed within the ROW, a minimum one foot away from the ROW line, and at least five feet away from the street curb.
 - (D) In certain instances, the development review committee may approve placement of sidewalks adjacent or closer than five feet to the curb or located on private property and in a public access easement, provided that such placement benefits the general public by allowing more space for pedestrian safety, drainage facilities, landscaping or tree preservation.
 - (E) Where no raised curb is installed, the sidewalk shall be at least ten feet from the edge of pavement (EOP) unless otherwise approved by the development review committee.
- (4) Root barriers shall be required, as determined by the city engineer, in locations where trees are (or will be) in close proximity to the sidewalk.
- (5) ADA requirement. All sidewalks shall be designed and constructed to meet the Texas Accessibility Standards administered by the Texas Department of Licensing and Regulation and the Americans with Disabilities Act, as amended. Barrier-free ramps shall be constructed at all street intersections and at any other locations deemed appropriate by the city due to anticipated pedestrian travel patterns.
- (6) Finish. All sidewalks shall have a light broom-swept finish to provide a non-slip surface.
- (c) <u>City acceptance and certificate of occupancy</u>.
 - (1) Sidewalks along streets or in public sidewalk easements are considered part of the overall development's required public improvements and shall be installed prior to acceptance of the public improvements by the city and prior to final plat approval, unless fiscal surety is provided.
 - (a) Exception: To prevent damage to newly constructed sidewalks. Construction of sidewalks fronting residential or commercial lots may occur after city acceptance of public infrastructure and final plat approval if fiscal surety is provided.
 - (b) Exception: For site developments with no public improvements other than sidewalks, sidewalks shall be

- installed prior to the city's final inspection of the development.
- (2) Certificate of occupancy will not be issued for any lot or unit within the development until the required sidewalks are in place.
- (d) Fee in lieu of construction.
 - (1) Fee-in-lieu of construction of sidewalks may be accepted when approved by the development review committee.
 - (2) The development review committee shall consider the following criteria when evaluating a request for fee-inlieu of construction for sidewalks:
 - (A) Proximity to the nearest existing sidewalk.
 - (B) Proximity to public facilities, such as public or private schools, libraries, and other government buildings;
 - (C) Whether any public sidewalk improvements are planned or contemplated in the area; and
 - (D) Any other information deemed appropriate by the Development Review Committee.
 - (3) Fee-in-Lieu payments shall be placed in the City of Dripping Springs Sidewalk Fund. Payments will be calculated based on the square feet of sidewalk construction waived as set out in the fee schedule. Funds shall be used for the sole purpose of sidewalk improvements and pedestrian amenities in public right-of-way, parks, and sidewalk easements within the city. The fee in lieu of sidewalks shall be paid in full to the city prior to approval of the construction plans or site development plans.

(<u>Ord. No. 2020-38</u>, § 2, 9-21-2020)

Sec. 28.04.020. - Post-construction restoration plan.

The plan and report must describe the developer's proposed measures for post-construction restoration, including restoring cuts and fills, spoil disposal and equipment storage sites and other land disturbances.

Sec. 28.04.021. - Inspections.

- (a) <u>Consent</u>. Any person or successor and assigns who has filed a site development plan for approval pursuant to this article agrees to allow entry on the tract or premises which are the subject of such applications for the purpose of inspection of conditions during the approval stage and during development and construction by duly authorized inspectors of the city.
- (b) <u>Costs</u>. Inspections mandated under this section shall be at the applicant's expense, or at the expense of the owner, at the time the inspection is performed, in accordance with the fee schedule adopted by the city council.
- (c) <u>Construction phase</u>. The city shall cause such inspection to be made of the land or premises during development and construction so as to assure full compliance with all terms, conditions, requirements, and agreements to which the person obtaining approval of a site development plan under this article is bound.
- (d) <u>Notices</u>. The applicant shall designate one person or legal entity, with a current address, to which any notice of noncompliance shall be given pursuant to this section.

Sec. 28.04.022. - Construction performance.

- (a) <u>Review by city engineer</u>.
 - (1) All plans and actual construction of improvements required under this article shall be reviewed by the city engineer or a designated city representative.
 - (2) No plans or completed construction will be considered for approval or acceptance by the city without

certification from the applicant, including an engineer's concurrence letter from the engineer of record *Item 6.* such plans and calculations and such construction are complete, and that they are in accordance with specifications and standards contained or referenced herein, and/or with plans previously approved for the subject site development permit.

- (3) The city engineer or a designated city representative may make field inspections during the construction period. If requested by the city engineer, the design engineer of record shall provide all records of materials testing in accordance with standard civil engineering practice.
- (4) If the city engineer rejects such construction, the city attorney shall, on direction of the council, proceed to enforce the guarantees provided in this article.
- (5) If requested by the city engineer, the design engineer of record shall submit written progress reports during construction periods.
- (6) The final responsibility for adequacy and acceptability of all construction shall rest with the developer and his design engineer of record.
- (b) <u>Right of entry</u>.
 - (1) Whenever necessary for the purpose of investigating or enforcing the provisions of this article, or whenever any enforcement officer has reasonable cause to believe that there exists in any structure or upon any premises any condition which constitutes a violation of this article, the officer may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed upon any said officer by law.
 - (2) Any permit holder shall agree to allow entry on the land or premises which are the subject of the permit for the purpose of inspection by city officials.

Sec. 28.04.023. - Required signature blocks.

(a) Projects located in the city limits shall include the following language on the cover sheet:

Reviewed by:

City of Dripping Springs City Administrator	 Date	
 City Engineer	 Date	
 Emergency Services District #6	 Date	

(b) Projects located in the ETJ shall include the following language on the cover sheet:

Reviewed by:

		Item 6.
City of Dripping Springs City Administrator	Date	
 City Engineer	 Date	
——– Hays County Fire Marshal (if applicable)	 Date	

Sec. 28.04.024. - Approval process of pool encroachment waiver.

(a) <u>City staff review</u>. Upon official submission of a complete application that requests a pool encroachment waiver, the city shall commence review of the request by forwarding a copy of the application to the city building official and city engineer. The city building official and city engineer shall review the application and shall ascertain its compliance with these regulations. Following city staff review of the plan and supporting documents, and following discussions with the applicant on any revisions deemed advisable and the kind and extent of the pool improvements to be installed, the applicant shall resubmit additional copies of the corrected plan to the city building official within 60 calendar days following the date on which the applicant received official notification of the completion of the review by the city building official and city engineer.

(b) Action by city building official.

- (1) The city building official may:
 - (A) Deem the pool encroachment approved;
 - (B) Deem the pool encroachment denied; or
 - (C) Make an initial determination and refer the matter to the P&Z and council.
- (2) If the city building official approves the pool encroachment waiver, no approval by the P&Z or city council is required. Pool encroachment waiver requests must meet the requirements of <u>chapter 28</u>, exhibit A, section 1.6 and this section in order to be reviewed and approved by the city building official.
- (3) The city building official may approve applications for the installation of pools within setback area on a property so long as the pool does not encroach within five feet of a neighboring property. The city building official shall not administratively approve an encroachment by a pool pump or other pool equipment, other that the pool itself, into the setback. Any application for a pool encroachment requires notification as outlined in section 1.6.2 of exhibit A: <u>chapter 28</u> of the subdivision ordinance. At the city building official's discretion a request for a pool encroachment wavier may be referred to the P&Z and council for approval or denial. In making the decision to refer a request for a pool encroachment waiver to the P&Z and council, the building official may consider the following factors:
 - (A) Amount of impervious cover proposed;
 - (B) Proximity to nearby developed properties; and
 - (C) Anticipated impact of project or encroachment on neighbors.
- (c) Denial by the city building official. The city building official's denial of a pool encroachment may be reviewed

the P&Z and city council through the review process outlined herein. If the applicant desires to appeal the *Item 6.* building official's denial then the applicant shall submit the denial and application to the city administrator no later than seven calendar days prior to the P&Z meeting. Copies of the denied application resubmitted to the city less than seven days prior to the meeting date shall not be accepted or forwarded to the P&Z.

(d) Action by P&Z and city council.

- (1) Without regard to the final action by the city building official, the P&Z shall review an application for a pool encroachment waiver upon receipt of written request from:
 - (A) The mayor;
 - (B) Two city councilmembers;
 - (C) The P&Z chairman; and/or
 - (D) Three P&Z members.
- (2) All applications reviewed by the P&Z under this subsection shall then be referred to the city council for approval or denial.
- (3) The city council shall consider an application for a pool encroachment when required by this section or <u>chapter 28</u>, exhibit A, subdivision ordinance, section 1.6.
- (4) Once the appeal is received, the city building official shall schedule consideration of the pool encroachment waiver on the regular agenda of the P&Z, within 30 days after the submission is received, or, in the case of an incomplete submission, after the submission is deemed complete. The P&Z shall review the appeal and shall recommend approval, approval subject to certain conditions, or disapproval of the pool encroachment. If the P&Z recommends approval, with or without conditions, of the plan, then it will be forwarded to the city council for consideration. If the P&Z recommends disapproval of a plan application, the P&Z shall state such disapproval and the reasons therefor.
- (5) The applicant or property owner may appeal such decision of the P&Z to the city council by filing a written notice of appeal in the office of the city administrator no later than ten calendar days after the date upon which the P&Z denied the application. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The city council shall consider the appeal at a public meeting no later than 30 calendar days after the date upon which the notice of appeal was filed. The city council may override the decision of the P&Z by vote of the majority of the councilmembers present. The city council may also, where appropriate, remand the plan application back to the P&Z for reconsideration if it believes that there is a compelling reason to do so, such as the introduction of significant new facts or testimony. The city council shall determine final approval or disapproval of all plan appeals.

(Ordinance 2019-30, adopted 9/10/19)

Sec. 28.04.025. - License to encroach.

- (a) <u>Purpose</u>. The purpose of a license to encroach is to determine the potential impacts of proposed improvements, structures, facilities, and encroachments into a public street, roadway, sidewalk, right-of-way, or easement in order to maintain their safety, mobility, and operational functionality.
- (b) <u>Applicability</u>. A license to encroach, in the procedures provided for in this section, is required for the following:
 - (1) Encroachments of new improvements including air conditioning pads, fences, roof overhangs, sheds, and other small improvements that do not include dwellings or other buildings into a public street, roadway, sidewalk, or right-of-way within the city limits and easements located within the city limits or the extraterritorial jurisdiction.

- (2) If a property owner applies for a change to a property on which an encroachment currently exists wher *Item 6.* license has been issued, and the change would increase the encroachment or create a new encroachment, an application for a license to encroach shall be submitted and the change only granted if a license to encroach is granted.
- (c) Those improvements, as defined above, that encroach into a public street, roadway, or sidewalk shall obtain approval from the city council, in addition to this license, other than applications for driveways and utility cut permits which shall continue to be processed as detailed in <u>chapter 28</u> of the Code of Ordinances.
- (d) Review of a license to encroach shall be done by the development review committee. The decision of the development review committee shall be final.
- (e) <u>Criteria for approval.</u> No license to encroach will be denied unless it is determined by the development review committee that the proposed location or type of improvement will negatively impact the function of the public street, roadway, sidewalk, right-of-way, or easement or have an adverse effect upon the health, safety, or welfare of the general public or an easement holder denies encroachment. In making this determination, the following will be evaluated:
 - (1) The proposed encroachment into a public street, roadway, sidewalk, right-of-way, or easement by any person shall not interfere with the lawful use thereof.
 - (2) Any proposed construction within a public street, roadway, sidewalk, right-of-way, or easement shall be in accordance with this code, the city's adopted construction standards, and any other applicable ordinances and regulations.
 - (3) At any time during the construction of any structure within a public street, roadway, sidewalk right-of-way, or easement:
 - (A) The applicable public street, roadway, or sidewalk shall be kept open for vehicular and pedestrian traffic in a reasonable manner and sidewalks shall not be obstructed as to prevent the use thereof by pedestrians;
 - (B) Dirt and other material removed from the construction of any structure within a public street, roadway, sidewalk, right-of-way or easement shall not be allowed to remain on the street or sidewalk and shall be removed immediately at the sole cost, risk, liability, and expense of the licensee;
 - (C) All excavations and obstructions of any kind that take place during the period of the licensee's construction shall be properly barricaded and well-illuminated during the night, subject to the approval of the building official.
- (f) Submission requirements.
 - (1) Any request for a license to encroach shall be accompanied by an application approved by the city, any required signatures, and the fee as set by city council plus reimbursement of consultant fees, if any. The application shall be accompanied with a letter of consent or signature for the water, electric, and wastewater utility (if any) when an encroachment will extend or expand into an area used or which could be used in the future by the utility.
 - (2) The development review committee may determine further studies will be required. Such studies may include, but are not limited to, an engineering study, which may be required at the determination of the city engineer. Only the elements of an engineering study that are necessary to answer specific questions that arise during the review process will be required for submittal.
- (g) <u>Responsibility for final action.</u> The development review committee is responsible for final action on licenses to encroach into an easement. For those requests that encroach into a public street, roadway, sidewalk, or right

way, final approval shall be obtained from the city council, other than applications for driveways and utility *Item 6.* permits which shall continue to be processed as detailed in <u>chapter 28</u> of the Code of Ordinances.

(h) Expiration. The city shall provide written notice at least 90 days in advance to the licensee, its representatives, successors, or assigns, to take possession of and use all or any part of the licensed area in the event that such use be reasonably desired or needed by the city for street, sewer, transportation, or any other public or municipal use or purpose. During such time, it is the responsibility of the licensee, its representatives, successors or assigns to remove the encroachment(s). In such an event, the city shall have the right to cancel the revocable license as to that portion of the licensed area so designated and required by the city.

(<u>Ord. No. 2020-55</u>, § 2, 11-10-2020)

ARTICLE 28.05 - CONSERVATION DESIGN

Sec. 28.05.001. - Title.

This article shall be commonly cited as the conservation design ordinance.

(Ordinance 1245.1, ex. A, § 1.1, adopted 4/19/05)

Sec. 28.05.002. - Intent.

The purpose of the conservation development option is to preserve rural landscape character, natural resource areas, farmland, and other large areas of open land, while permitting development in an open space setting, located and designed to reduce the perceived intensity of development and provide privacy for dwellings. Specific objectives are as follows:

- (1) To maintain and protect the region's rural character by preserving important landscape elements, including those areas containing unique and environmentally sensitive natural features such as woodlands, hedgerows, stream corridors, wetlands, floodplains, prairies, woodlots, ridge tops, steep slopes, critical species habitat, and natural areas, by setting them aside from development. Such areas contained in the city limits and the extraterritorial jurisdiction of the city, as identified by the 2004 Existing Land Use Inventory maps, are of particular significance for conservation of the natural Central Texas Hill Country landscape.
- (2) To preserve scenic views and to minimize views of new development from existing streets and roadways.
- (3) To provide for the unified and planned development of parcels 50 acres or larger in size for clustered, singlefamily, residential uses, incorporating large areas of permanently protected common open space.
- (4) To provide for greater design flexibility in the siting of dwellings and other development features than would be permitted by the application of standard subdivision regulations in order to minimize the disturbance of rural landscape elements, scenic quality, and overall aesthetic value of the landscape.
- (5) To increase flexibility and efficiency in the siting of services and infrastructure, by reducing street length, utility requirements, drainage requirements, and the amount of paving required for residential development, where possible.
- (6) To create groups of dwellings with direct visual and physical access to common open space.
- (7) To permit active and passive recreational use of common open space by residents of a cluster development or by the public.
- (8) To reduce erosion and sedimentation by retaining existing vegetation and minimizing development on steep slopes.

- (9) To allow for the continuation of agricultural uses in those areas best suited for such activities and wher *Item 6.* compatible with adjoining residential uses.
- (10) To permit various means for owning common open space and for protecting it from development in perpetuity.
- (11) To create an attitude of stewardship, or caring, for the land within common open space by requiring a land management, or stewardship, plan for the common open space.
- (12) To implement the objectives of the city's comprehensive plan.

(Ordinance 1245.1, ex. A, § 1.2, adopted 4/19/05)

Sec. 28.05.003. - Scope.

This article applies to all property within the city limits and the ETJ.

(Ordinance 1245.1, ex. A, § 1.3, adopted 4/19/05)

Sec. 28.05.004. - Definitions.

- (a) <u>Additional provisions</u>. This list of definitions includes only those terms or phrases that are particular to cluster zoning ordinances and may not already be included in typical current local zoning ordinances. These terms or phrases should be added to any existing list of definitions contained in zoning ordinances to which these model cluster development provisions might be added. It should be noted that these definitions are particular to this model. If provisions of this article are changed, some definitions will also need to be changed. For example, the maximum number of units in a "cluster group" may be reduced or increased; similarly, the amount of required open space may be reduced or increased.
- (b) <u>Cluster zoning definitions</u>.

<u>Cluster development</u>. A form of residential development that concentrates buildings or lots on a part of the site to allow the remaining land to be used for common open space, recreation, and preservation of environmentally sensitive features. The concentration of lots is facilitated by a reduction in lot size. A cluster development will consist of one or more cluster groups surrounded by common open space.

<u>*Cluster group*</u>. A group of single-family detached dwellings within a cluster development, surrounded by common open space that comprises at least 60 percent of the gross parcel area. The outer boundary of a cluster group shall be defined by the rear lot lines of the lots within the group.

<u>Common element</u>. The common facilities in a condominium.

<u>Common facilities</u>. All the real property and improvements set aside for the common use and enjoyment of the residents of a cluster development, including, but not limited to, buildings, open space, private streets, parking areas, walkways, recreation areas, drainage easements, and any utilities that service more than one unit, such as sewer and water supply facilities.

<u>Common open space</u>. Undeveloped land within a cluster development that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space shall not be part of individual residential lots, and shall be substantially free of structures, but may contain such recreational facilities for residents as are shown on the approved development plan.

Community association. A condominium or homeowners' association.

<u>Conceptual plan</u>. A plan furnished by the applicant and submitted to the city, which provides a generalized view of <u>Item 6</u>. proposed development, site conditions and limitations, open space areas, housing cluster locations and groupings, and critical environment features of the parcel.

<u>Condominium</u>. A form of ownership combining individual unit ownership with shared use and ownership of common property or facilities, established in accordance with the requirements of the Texas Statutes. Common areas and facilities are owned by all members of the condominium association on a proportional, undivided basis. A condominium is a legal form of ownership and not a specific building type or style.

<u>Condominium association</u>. An association, whose members consist of owners of units in a condominium, which administers and maintains the common property and common elements of a condominium.

<u>Conservation easement</u>. The grant of a property right or interest from the property owner to another person, agency, unit of government, or organization stipulating that the described land shall remain in its natural, scenic, open, or wooded state, precluding future or additional development.

<u>Deed restriction</u>. A restriction on the use of a property set forth in the deed.

<u>Density bonus</u>. An increase in the number of dwelling units permitted within the net buildable area, in exchange for the preservation of a larger percentage of common open space in the development.

<u>Development rights</u>. A broad range of less than fee-simple ownership interests. An owner may keep fee-simple rights to his land and sell the development rights to another. The owner retains the title, but agrees to keep the land natural and undeveloped, with the right to develop resting with the holder of the development rights.

<u>Environmental corridor</u>. An area of contiguous or near-contiguous undeveloped rural land which constitutes a historic habitation or migration route for native fauna and/or flora.

<u>*Floodplains*</u>. Those lands, including the floodplain, flood fringe, floodway, and channel, subject to inundation by the 100year recurrence interval flood or, where such data is not available, the maximum flood of record.

Hedgerow. A row of shrubs or trees planted for enclosure or separation of fields.

<u>Height of building</u>. The vertical distance measured from the average elevation of the existing grade of the building to the highest point of a flat or multi-level roof or, for gable or hip roofs, to the mean height between the eaves and the ridge. Chimneys, spires, towers, mechanical penthouses, tanks, and similar projections not intended for human occupancy shall be excluded.

<u>Homeowners' association</u>. An association combining individual home ownership with shared use, ownership, maintenance, and responsibility for common property or facilities, including private open space, within a land division or cluster development.

<u>Net buildable acreage or net buildable area (NBA)</u>. A calculated area upon which the density for cluster development is computed. Net buildable acreage is the area of a site remaining after subtracting all or a percentage of the following areas from the site's gross area: existing street rights-of-way, floodplains, wetlands, woodlands, ponds and lakes, steep slopes, and utility and railway rights-of-way.

<u>Nonprofit conservation organization</u>. A nonprofit corporation, charitable trust, or other nonprofit organization described in section 501(c)(3) of the Internal Revenue Code, which includes the "acquisition of property or rights in property for conservation purposes" as part of its mission, as reflected in the bylaws, charter, or incorporation papers of the organization.

<u>Primary conservation areas</u>. This category consists of wetlands, lands which are generally inundated (within pond <u>Item 6</u>. lakes, creeks, etc.), and land within the 100-year floodplain or on slopes exceeding 25 percent. These sensitive lands are deducted from the total parcel acreage to produce the net buildable acreage on which density shall be based.

<u>Restrictive covenant</u>. See "Deed restriction."

<u>Secondary conservation area</u>. Areas totaling not less than 40 percent of the remaining tract acreage, after the removal of primary conservation area acreage.

<u>Separation distance</u>. The required dimensional distance between the outer boundary of a cluster group and another specified feature of the development.

<u>Street tree</u>. A tree planted within the right-of-way of an arterial, collector, or neighborhood street and maintained by the property owners' association or condominium association.

<u>Woodland</u>. An area of land characterized by dense or moderately dense tree covering. Overgrowths of non-native, invasive species of trees are not included in this definition.

(Ordinance 1245.1, ex. A, § 10, adopted 4/19/05)

Sec. 28.05.005. - Uses.

- (a) Principal permitted uses.
 - (1) Single-family residential uses as follows:
 - (A) Clustered single-family detached or attached residential dwellings, with at least 40 percent of the gross development parcel in common open space.
 - (B) Single-family farmstead dwellings with or without associated agricultural structures such as barns, silos, storage sheds, and stables.
 - (2) Agricultural/horticultural activities including:
 - (A) The small-scale cultivation, harvesting, and sale of crops and related products.
 - (B) Orchards, nurseries, greenhouses, and related horticultural enterprises.
 - (C) Growing and sale of Christmas trees.
 - (3) Open space uses, primarily passive in nature, including wildlife sanctuaries, forest preserves, nature centers, trails, picnic areas, and similar uses.
 - (4) Improved recreational or athletic facilities, comprising no more than ten percent of the total common open space.
 - (5) Conservation of natural features in their existing state.
 - (6) Stormwater management facilities for the proposed development, including detention and retention basins.
 - (7) Essential services such as neighborhood-oriented retail and office facilities, when the total acreage of the development site is 500 acres or more.
 - (8) The following uses are permitted in common open space in cluster development:
 - (A) Uses listed above.
 - (B) Water supply and sewer facilities for individual lots, groups of lots, or the entire development.
 - (C) Utility and street rights-of-way, except that their land areas shall not count toward the 50 percent minimum open space requirement.
 - (D) Parking areas where necessary to serve active recreation facilities.

- (b) Accessory uses .
 - (1) Attached and detached private garages and storage structures, provided that:
 - (A) One detached garage, equal in area to not more than 800 square feet or 20 percent of the square footage of the primary dwelling, shall be permitted.
 - (B) One detached storage structure, not exceeding 500 square feet, shall be permitted on a lot, in addition to any attached or detached garage.
 - (2) Home occupations which are clearly incidental to the principal residential use, provided that the requirements of the city Code of Ordinances are met.
- (c) <u>Conditional uses</u>. The following conditional uses may be permitted by the city, provided the proposed use shall not adversely impact the rural character of the development and shall be consistent with the overall objectives of the subdivision ordinance of the city:
 - (1) Community gardening uses for storage of equipment and/or supplies requiring the installation of new buildings or other structures in the common open space of a cluster development. The total building coverage of such new buildings or structures shall not exceed 3,000 square feet.
 - (2) Camping or picnic facilities for private organizations such as civic, professional or community groups, provided such facilities are compatible with adjacent uses.
 - (3) Recreational uses requiring the installation of new buildings or other structures in the common open space of a cluster development. The total building coverage of such new buildings or structures shall not exceed 6,000 square feet.
- (d) Prohibited uses and activities .
 - (1) The use of non-recreational motor vehicles except on public streets and parking areas. Maintenance, law enforcement, emergency, and farm vehicles are exempt from this limitation.
 - (2) The cutting of healthy, mature or protected trees, re-grading, topsoil removal, altering, diverting, or modifying water courses or bodies, or encroachment on any critical environment feature, such a sinkholes, karst formations, steep slopes, caves, or wetlands in the common open space areas. (This requirement shall not apply to the removal of noxious or invasive species of trees for the purpose of woodlands or landscape management or for the protection of public safety and health, or to such activities on a homeowner's property, in keeping with the city landscaping ordinance.)
 - (3) Commercial animal feedlots or poultry operations.

(Ordinance 1245.1, ex. A, § 2, adopted 4/19/05)

Sec. 28.05.006. - Site analysis; density and dimensional standards.

- (a) <u>Site analysis required</u>. To aid the city in determining whether the applicant has accomplished the intent and objectives as described in this article, and the design standards for cluster groups and common open space as described in this article, the initial application for any development shall include a site analysis of the parcel and a conceptual plan for the development.
- (b) <u>Review of site analysis</u>. The applicant or his/her official representative shall submit these documents to the city administrator for staff review, who will then submit the application with staff comments to the planning and zoning commission for the purpose of obtaining early agreement on the apparent suitability of the parcel to conservation development and the completeness of the applicant's conceptual plan.
- (c) Specifications for site analysis. The specific requirements for the site analysis and conceptual plan shall inclu

at minimum:

- (1) A topographical map with elevation contours to scale and showing ten-foot intervals.
- (2) The location of severely constraining elements such as steep slopes (over 25 percent), wetlands, watercourses, intermittent streams, the 100-year floodplain, all rights-of-way and easements, karsts, caves, sinkholes and other critical environment features.
- (3) The location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watersheds divides, existing fences or stone walls, rock outcroppings, cliffs, and existing roads or trails.
- (4) Locations of any existing structures or ruins.
- (5) The approximate location(s) and dimensions of proposed open space areas.
- (6) Configuration and location(s) of proposed housing clusters groups.
- (7) Locations of areas of low and moderate septic tank tolerant soils.
- (8) Clear identification of primary and secondary conservation zones.
- (d) <u>Site inspection</u>. After the site analysis has been prepared, city staff shall schedule a mutually convenient date to walk the property with the applicant and his/her designer. Elected or appointed officials may be invited to this inspection. The purpose of this visit is to familiarize local officials with the property's special features, and to provide them an informal opportunity to offer guidance or, at minimum, a response to the applicant's conceptual plan for the development, including areas identified for preservation and areas identified for the location of housing clusters, community amenities, and infrastructure.
- (e) <u>Density and dimensional standards</u>. The following density and dimensional standards shall apply to residential cluster development:

	Lots or Parcels Served by Private On-Site Waste Treatment Systems	Lots or Parcels Served by Centralized Sewer Facilities
Maximum density ^a	1 dwelling unit per 1 net buildable acre	1 dwelling unit per 0.75 net buildable acre
Minimum lot area ^a	35,000 square feet	5,000 square feet
Minimum lot width, measured at front lot line	50 feet	40 feet
Minimum front yard	25 feet	25 feet
Minimum rear yard	15 feet	15 feet
Minimum side yard	5 feet	NA
Accessory building setback ^b		
From side lot lines	5 feet	5 feet

From rear lot line	10 feet	10 feet	Item 6.
Minimum usable common open space (percentage of gross acres)	40%	40%	
Maximum height	35 feet	35 feet	
Principal structure	35 feet	35 feet	
Non-agricultural accessory structures	25 feet	25 feet	
Agricultural accessory structures	25 feet	25 feet	
Maximum building coverage per lot	20 percent	Detached: 50 percent Attached: 70 percent	

^a Existing dwellings that will remain on the site shall be included in the calculation of maximum density.

^b Accessory buildings shall not be permitted within the front yard.

- (f) <u>Separation distances for cluster groups</u>.
 - (1) The outer boundaries of all cluster groups shall conform to the following separation distances:
 - (A) From existing or proposed arterial street rights-of-way, such as highways, entrance boulevards, and other major non-internal streets: 200 feet.
 - (B) From existing scenic highways or rustic roads: 100 feet.
 - (C) From all perimeter subdivision boundaries: 100 feet.
 - (D) From cropland or pasture land: 25 feet.
 - (E) From other cluster groups: 100 feet.
 - (F) From wetlands, floodplains, or watercourses: 150 feet.
 - (G) From active recreation areas, such as courts or playing fields: 100 feet.
 - (2) All separation areas for cluster groups along existing streets shall be landscaped in accordance with this article, in order to block views of new residential development, preserve scenic views, and protect rural landscape character.
 - (3) The dimensional standards specified in this article may be reduced under the following circumstances:
 - (A) The separation distances from existing arterial streets and the perimeter of the subdivision may be reduced, by no more than 50 percent, if the applicant can demonstrate that existing vegetation or topography or a combination of these form an effective visual screen.
 - (B) All other separation distances may be reduced by up to 50 percent if the applicant can demonstrate to the satisfaction of the planning commission and city council that such reduced setbacks improve the plan's compliance with the cluster group design standards in this article, the intent of this article, and ²⁴

objectives of the city's comprehensive plan.

- (g) <u>Calculation of site capacity</u>.
 - (1) For cluster development, the calculation of site capacity, or the number of dwelling units permitted on a site, shall be based on net buildable acreage. The applicant shall determine the net buildable acreage (NBA) using the following method, substantiated by sufficient plans and data to verify the calculations:

Gross acreage of site:	acres
From the gross acreage of the site, subtract the following:	
All lands located within existing street rights-of-way:	acres
All lands located within existing utility and railway rights-of-way:	acres
All lands located within a floodplain:	acres
All lands located within a wetland:	acres
All of the area located within a pond or lake:	acres
All of the land area having a slope of 25 percent or greater:	acres
Twenty-five percent of the area located within a woodland:	acres
The result is the net buildable acreage (NBA):	

- (2) In the calculation above, the following shall apply:
 - (A) The elevation of the 100-year recurrence interval floodplain determined through floodplain studies shall be used where available. Where such flood stage data is not available, the regulatory flood elevation shall be determined by a registered professional engineer and the sealed report of the engineer setting forth the regulatory flood stage and the method of its determination shall be approved by the city engineer.
 - (B) Where two or more categories overlap, the overlapping acreage shall be counted only once, using the most restrictive classification.

(Ordinance 1245.1, ex. A, § 3, adopted 4/19/05)

Sec. 28.05.007. - Design standards for cluster groups.

- (a) The following standards shall apply to all cluster groups:
 - (1) All dwelling units shall be grouped into cluster groups, each of which shall be surrounded by common open space.
 - (2) The maximum number of lots in a cluster group may be increased, and cluster groups may be assembled into larger groupings, with the approval of the city and provided that the applicant can demonstrate that

such an alternative plan is more appropriate for the development parcel and will meet both the genera *Item 6.* intent and design standards of this article.

- (3) A plat may contain one or more cluster groups.
- (4) Cluster groups shall be defined by the outer perimeter of contiguous lotted areas or abutting streets, and may contain lots, streets, and cluster group open space. When the development does not include individual lots, as in a condominium, the outer perimeter shall be defined as an area encompassed by a line drawn around the units, no point of which is less than 100 feet from any unit.
- (5) The outer boundaries of each cluster group shall meet the separation distance requirements specified in this article.
- (6) Cluster groups shall be defined and separated by common open space in order to provide direct access to common open space and privacy to individual lot or yard areas. Cluster groups may be separated by streets if the street right-of-way is designed as a boulevard.
- (b) Internal open space provided within cluster groups shall meet the following standards:
 - (1) Common open space located within cluster groups shall be counted toward meeting the overall 40 percent open space requirement.
 - (2) The open space shall be configured as a cul-de-sac island, an island within a larger loop or an "eyebrow" (a semi-circular loop), an island in a boulevard street, or a common green area. Common green areas surrounded by lots on up to three sides shall be designed as a space for common use by all residents within the cluster group.
 - (3) The open space shall have a minimum street frontage of 125 feet.
 - (4) Internal open space may contain parking areas, but parking areas shall not be counted toward meeting the overall 40 percent open space requirement.
- (c) All lots in a cluster group shall abut and have access to common open space to the front or rear. Common open space across a street shall qualify for this requirement.
- (d) In locating cluster groups, disturbance to woodlands, hedgerows, and individual mature trees shall be minimized. However, when the objective is to preserve prime soils and large areas of contiguous land suitable for common open space or community uses, dwellings may be located within woodlands, provided that no more than 20 percent of a single wooded lot is cleared for the construction of a dwelling, driveway, garage, storage building, well, and private on-site waste treatment system.

(Ordinance 1245.1, ex. A, § 4, adopted 4/19/05)

Sec. 28.05.008. - Design standards for common open space.

- (a) On all parcels developed under the cluster development regulations, a minimum of 40 percent of the gross land area shall be set aside as protected common open space.
 - (1) This open space shall meet the following standards.
 - (2) For the purposes of this subsection, gross land area includes all lands within the parcel, except existing street, railway, and utility rights-of-way.
 - (3) Common open space shall comply with the following design standards:
 - (A) The location of common open space shall be consistent with the objectives of the city's comprehensive plan.
 - (B) All open space areas shall be part of a larger continuous and integrated open space system within the

parcel being developed. At least 75 percent of the common open space areas shall be contiguous to *Item 6.* another common open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.

- (C) Common open space shall, to the greatest extent possible, protect site features identified in the site inventory and analysis as having particular value in the context of preserving rural character, in compliance with the intent of this article. Environmental corridors and isolated natural resource areas are of particular significance for protection.
- (D) Natural features shall generally be maintained in their natural condition, but may be managed to improve their appearance, or restore their overall condition and natural processes, as recommended by natural resource professionals and in compliance with an approved land stewardship plan, as described in this article. Permitted management activities may include:
 - (i) Woodland management.
 - (ii) Reforestation.
 - (iii) Meadow management.
 - (iv) Wetlands management.
 - (v) Stream bank protection.
 - (vi) Buffer area landscaping.
 - (vii) Wildlife management.
- (E) All wetlands, floodplains, wildlife habitat areas, slopes over 12 25 [sic] percent, 100 percent of lowland environmental corridor, and a minimum of 80 percent of primary conservation area corridors shall be contained in common open space.
- (F) The common open space shall maximize common boundaries with existing or future open space on adjacent lands, as shown in the city's comprehensive plan.
- (G) To preserve scenic views, ridge tops and hilltops should be contained within common open space wherever possible. Trees shall not be removed from ridge tops or hill tops.
- (H) A minimum of 50 percent of the area of existing woodlands shall be contained within common open space. Up to 20 percent of the area of existing woodlands may be located within lots or used for residential development. This limitation may be exceeded under the following conditions:
 - (i) The site is primarily wooded and development at the permitted density would not be possible without encroaching further into the woodlands.
 - (ii) Any encroachment on woodlands beyond 20 percent shall be the minimum needed to achieve the maximum permitted density, as determined by the city.
- (I) No area of common open space shall be less than 30 feet in its smallest dimension or less than 10,000 square feet in area, with the exception of landscape islands and landscaped areas separating existing house lots. Open space not meeting this standard shall not be counted toward the total required 40 percent common open space.
- (J) The boundaries of common open space shall be marked, insofar as possible, by natural features wherever possible, such as hedgerows, edges of woodlands, streams, or individual large trees.
- (K) Trails in common open space that are located within 50 feet of homes in cluster groups shall be identified by plantings, fences, or other landscape features.

- (L) Under no circumstances shall all common open space be isolated in one area of the development. *Item 6.* shall be distributed appropriately throughout the development to properly serve and enhance all dwelling u groups, and other common facilities.
- (M) Common open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets, and shall, in no case, contain less than the required buffer, setback area, or separation distance.
- (b) Safe and convenient pedestrian access and access for maintenance purposes shall be provided to common open space areas in accordance with the following:
 - (1) At least one access point per cluster group shall be provided, having a width equal to or greater than the minimum width of a lot within the cluster group. This width may be reduced to no less than 50 percent if the applicant can demonstrate that, due to natural site constraints, meeting the lot width requirement would run counter to the objectives of this section.
 - (2) Access to common open space used for agriculture may be restricted for public safety and to prevent interference with agricultural operations.
- (c) The following areas shall not be included in the calculation of common open space areas:
 - (1) Private lot areas.
 - (2) Street and highway rights-of-way, public or private.
 - (3) Railway and utility rights-of-way.
 - (4) Parking areas.
 - (5) Areas not meeting the requirements of this article.

(Ordinance 1245.1, ex. A, § 5, adopted 4/19/05)

Sec. 28.05.009. - Preservation of existing vegetation; landscaping generally.

- (a) For the purpose of conserving the natural landscape and in recognition of the time value of existing vegetation, the preservation of existing vegetation shall always be preferred to the installation of new plant material.
- (b) Existing woodlands and hedgerows shall be retained to the maximum extent possible. Where possible, existing woodlands and hedgerows shall be incorporated into the required separation areas between cluster groups and external streets and site boundaries.
- (c) Suitable existing vegetation shall be credited toward the landscaping requirements of this section when, in the opinion of the city council, it would equal or exceed the visual impact of the new required plant material after two years of growth.
- (d) All new landscaping to be installed and existing vegetation to be preserved shall be protected in accordance with the guidelines found in the City of Austin's Grow Green booklet and the LCRA Hill Country Landscape Program. New plantings shall be of drought-tolerant and native Central Texas plant varieties, installed in a manner which preserves moisture and controls invasive weeds, using only natural and organic fertilizers.

(Ordinance 1245.1, ex. A, § 6.1, adopted 4/19/05)

Sec. 28.05.010. - Street trees.

- (a) Street trees shall be planted along internal streets within cluster groups.
- (b) Street trees may be planted, but are not required, along internal streets passing through common open space.

(c) Informal arrangements are encouraged for street trees, to avoid the urban appearance that regular spacin *Item 6.*

- (d) Street trees shall be located so as not to interfere with the installation and maintenance of utilities and paths, trails, or sidewalks that may parallel the street.
- (e) The species of street trees shall be selected from the "List of Recommended Species for Landscaping" adopted by the city council.
- (f) Street tree plantings shall comply with all applicable regulations in the city Code of Ordinances.

(Ordinance 1245.1, ex. A, § 6.2, adopted 4/19/05)

Sec. 28.05.011. - Buffers.

- (a) A buffer area at least 50 feet in width shall be established within all required separation areas between external streets and cluster groups.
- (b) Planted buffers within separation areas between cluster groups are encouraged to enhance privacy and a rural appearance between lots.
- (c) Buffers consisting of an informal arrangement of native plant species combined with infrequent mowing are strongly encouraged, to create a low-maintenance, natural landscape.
- (d) Increasing the edge condition between wooded areas and adjacent fields is encouraged as an aid in increasing wildlife habitat.

(Ordinance 1245.1, ex. A, § 6.3, adopted 4/19/05)

Sec. 28.05.012. - Ownership of common facilities.

- (a) To ensure adequate planning for ownership, operation, and maintenance of common open space, recreation facilities, stormwater management facilities, common parking areas and driveways, private streets, and other common or community facilities (hereinafter referred to as "common facilities"), the following regulations shall apply.
- (b) The following methods may be used, either alone or in combination, to own common facilities. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this subsection, and then only when there is no change in the common facilities. Ownership methods shall conform to one or more of the following:
 - (1) Homeowners' association. Common facilities shall be held in common ownership as undivided proportionate interests by the members of a homeowners' association, subject to the provisions set forth herein:
 - (A) The applicant shall provide to the city a description of the organization, including its bylaws, and all documents governing maintenance requirements and use restrictions for common facilities. Such documents shall be approved as to form by the city attorney.
 - (B) The organization shall be established by the owner or applicant and shall be operating, with financial subsidy by the applicant, if necessary, prior to the sale of any dwelling units in the development.
 - (C) Membership in the organization shall be mandatory for all purchasers of dwelling units therein and their successors and assigns.
 - (D) The organization shall be responsible for maintenance and insurance of common facilities.
 - (E) The members of the organization shall share equitably the costs of maintaining, insuring, and operating common facilities.
 - (F) The organization shall have or hire adequate staff to administer, maintain, and operate common facili

- (G) The applicant for any cluster subdivision or development proposed to contain common facilities sh *Item 6.* arrange with the county tax assessor a method of assessment of the common facilities which will allocate to each tax parcel in the development a share of the total assessment for such common facilities.
- (H) Written notice of any proposed transfer of common facilities by the homeowners' association or the assumption of maintenance of common facilities must be given to all members of the organization and to the city at least 30 days prior to such event.
- (2) Condominium agreements. Common facilities shall be controlled through the use of condominium agreements. Such agreements shall be approved as to form by the city attorney and shall comply with the requirements of the Texas Statutes. All common open space and other common facilities shall be held as "common elements" by the unit owners in the form of undivided percentage interests in accordance with the condominium documents. An association of unit owners shall be formed to govern the affairs of the condominium and membership shall be mandatory.
- (3) Fee simple dedication to a public agency. The city or other public agency acceptable to the city may, but shall not be required to, accept any portion of the common facilities, provided that:
 - (A) There shall be no cost of acquisition, other than costs incidental to the transfer of ownership, such as title insurance.
 - (B) Any facilities so dedicated shall be accessible to the residents of the city, if the city so chooses.
 - (C) The city or other public agency shall maintain such facilities.
 - (D) The residents of the development shall hold a conservation easement on the land and facilities so dedicated, protecting the common open space from development in perpetuity.
- (4) Dedication of conservation easements to a public agency. The city or other public agency acceptable to the city may, but shall not be required to, accept easements for public use of any portion of the common facilities, title of which is to remain in private ownership, provided that:
 - (A) There is no cost of easement acquisition, other than costs incidental to the transfer of ownership, such as title insurance.
 - (B) A satisfactory maintenance agreement shall be reached between the owner and the city.
 - (C) Lands under a city easement may or may not be accessible to residents of the city.
- (5) Fee simple dedication to a nonprofit conservation organization. With the approval of the city council, an owner may dedicate any portion of the common facilities to a nonprofit conservation organization, provided that:
 - (A) The organization is acceptable to the city.
 - (B) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its responsibilities.
 - (C) A maintenance agreement acceptable to the city is established between the owner and the organization.
- (6) Dedication of conservation easements to a nonprofit conservation organization. With the approval of the city, an owner may dedicate conservation easements on any portion of the common facilities to a nonprofit conservation organization, provided that:
 - (A) The organization is acceptable to city.
 - (B) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its responsibilities.
 - (C) A maintenance agreement acceptable to the city is established between the owner and the organizati

- (7) Ownership retained by the original landowner. Ownership of common open space and facilities may be *Item 6.* original landowner provided that:
 - (A) The city and residents of the development shall hold conservation easements on the land protecting it from any further development.
 - (B) Resident access to the land is limited only by agreement of the residents of the development, as indicated by documents signed at the time of purchase of individual dwelling units.
- (8) Other methods acceptable to the city, upon recommendation by the city attorney.

(Ordinance 1245.1, ex. A, § 6.4, adopted 4/19/05)

Sec. 28.05.013. - Maintenance and operation of common facilities; land stewardship plan.

- (a) A plan and narrative for the use, maintenance, and insurance of all common facilities, including provisions for funding, shall be provided to and approved by the city prior to preliminary plat approval. Such plan shall:
 - (1) Define ownership.
 - (2) Establish necessary regular and periodic operation and maintenance responsibilities.
 - (3) Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an ongoing basis.
 - (4) Include a land stewardship plan specifically focusing on the long-term management of open space lands. A draft land stewardship plan shall be submitted with a preliminary plat, and a final plan shall be submitted with the final plat. The land stewardship plan shall comply with the requirements of this article.
 - (5) At the discretion of the city, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year.
- (b) In the event that the association established to own and maintain common areas and facilities, or any successor organization thereto, fails to properly maintain all or any portion of the aforesaid common areas or facilities, the city may serve written notice upon such association setting forth the manner in which the association has failed to maintain the aforesaid common areas and facilities. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made. Upon failure to comply within the time specified, the association, or any successor organization, shall be considered in violation of this article, in which case the city shall have the right to enter the premises and take the needed corrective actions. The costs of corrective actions by the city shall be assessed against the properties that have the right of enjoyment of the common areas and facilities.
- (c) The land stewardship plan shall include a narrative describing:
 - (1) Existing conditions, including all natural, cultural, historic, and scenic elements in the landscape.
 - (2) Objectives for each common open space area, including:
 - (A) The proposed end state for the area and the measures proposed for achieving the end state.
 - (B) Proposed restoration measures, including:
 - (i) Measures for correcting increasingly destructive conditions, such as erosion.
 - (ii) Measures for restoring historic features.
 - (iii) A maintenance and operations plan identifying activities needed to maintain the stability of the resources, including mowing schedules, weed control measures, planting schedules, and clearing and cleanup measures and schedules.

Sec. 28.05.014. - Leasing of common open space lands.

Common open space lands may be leased to another person or other entity for use, operation, and maintenance, provided that:

- (1) The residents of the development shall at all times have access to such leased lands, except in the case of lease for agricultural purposes, in which case the residents, with their agreement, may be restricted from accessing the lands.
- (2) The common open space lands to be leased shall be maintained for the purposes set forth in this section.
- (3) The operation of such leased open space lands may be for the benefit of the residents of the development only, or may be open to the public, if so determined by the residents.
- (4) The lease, and any transfer or assignment thereof, shall be subject to the approval of the city.
- (5) Lease agreements shall be recorded in the office of the county register of deeds within 30 days of their execution, and a copy of the recorded lease shall be filed with the city.

(Ordinance 1245.1, ex. A, § 6.6, adopted 4/19/05)

Sec. 28.05.015. - Conservation of common open space.

Common open space shall be restricted in perpetuity from further subdivision and/or land development by deed restriction, conservation easement, or other agreement in a form acceptable to the city upon recommendation of the city attorney and duly recorded in the office of the county register of deeds.

(Ordinance 1245.1, ex. A, § 6.7, adopted 4/19/05)

Sec. 28.05.016. - Sewer and water supply facilities.

- (a) Sewer facilities.
 - (1) Sewer facilities for cluster development may consist of any system meeting the requirements of the county, the city, and the state commission on environmental quality.
 - (2) If approved by the city council, sewer facilities or portions thereof may be located within common open space areas.
 - (3) All public community sewer facilities shall be owned, operated, and maintained by a general or special purpose unit of government.
- (b) Water supply facilities .
 - (1) Water supply facilities may consist of any of following systems, provided they meet the requirements of the county, the city, and the state commission on environmental quality:
 - (A) Private community wells.
 - (B) Rainwater harvesting systems.
 - (C) Public water supply system.
 - (D) Private individual wells, only where neither [subsection] (A) nor (C) is available.
 - (2) All public water supply facilities shall be owned, operated, and maintained by a general or special purpose unit of government.

(Ordinance 1245.1, ex. A, § 7, adopted 4/19/05)

Sec. 28.05.017. - Evaluation criteria.

- (a) The planning for a subdivision development under this section should be accomplished utilizing a four-step approach: Step 1 consists of identifying the land to be permanently protected. Step 2 involves locating the sites of housing clusters within the net buildable area. Step 3 involves "connecting the dots" with streets, utilities and informal trails. Step 4 is the drawing of individual lot lines.
- (b) The planning and zoning commission and city council shall evaluate proposals for conservation developments to determine whether the proposed development:
 - Protects and preserves all floodplains, wetlands and steep slopes from clearing, grading, filling or construction (except as may be approved by the governing body for essential infrastructure or active or passive recreation amenities).
 - (2) Preserves and maintains rural land features such as woodlands, existing fields, meadows or orchards, and preserves the natural topographical profile.
 - (3) Maintains or creates an upland buffer of natural native species vegetation of not less than 100 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes and ponds.
 - (4) Minimizes impact on large woodlands (greater than five acres), especially those containing many mature trees or significant wildlife habitat.
 - (5) Leaves scenic views or vistas unblocked and uninterrupted, particularly as seen from public thoroughfares.
 - (6) Avoids siting new construction on prominent hilltops or ridges.
 - (7) Protects wildlife habitat, especially areas of species which are endangered, threatened, or of special concern.
 - (8) Designs around and preserves sites of historic, archeological or cultural value.
 - (9) Protects rural roadside character and promotes public safety by not locating development with direct access to existing public roads or highways.
 - (10) Landscapes common areas, cul-de-sacs, community greens and roadway edges using native species trees and shrubs with high drought resistance and wildlife conservation value.
 - (11) Provides active recreational areas in suitable locations that offer convenient access by residents and adequate screening from adjacent house lots.
 - (12) Includes a pedestrian circulation system that provides safety for residents walking, jogging or bicycling within the development.
 - (13) Provides open space which is reasonably contiguous.

(Ordinance 1245.1, ex. A, § 8, adopted 4/19/05)

Sec. 28.05.018. - Development options.

- (a) <u>Density bonus option</u>.
 - (1) On all parcels developed under this conservation development option, a minimum of 40 percent of the gross land shall be set aside as protected common open space. At the developer's option, additional housing density on the remaining parts of the land may be approved in return for additional protected open space land as follows:
 - (A) In exchange for preserving 45 to 50 percent of the gross land as protected common open space, the developer shall be entitled to a density bonus within the net buildable area of ten percent.
 - (B) In exchange for preserving more than 50 percent of the gross land as protected common open space

developer shall be entitled to a density bonus within the net buildable area of 20 percent.

- (2) Buildings added by density bonus exchanges may be:
 - (A) Distributed as evenly as feasible throughout all housing cluster groups as single-family residences; or
 - (B) Concentrated in one or more housing cluster groupings, to provide for garden homes, town homes, or very low intensity multifamily housing.
- (b) <u>Lot averaging</u>. For the purpose of providing additional design flexibility beyond that already gained by the use of cluster development, lot averaging shall be permitted as follows:
 - (1) The area of a lot may be reduced below the minimum provided that the area by which it is reduced is added to another lot, and further provided that, in all cases, proper water supply and sewer facilities shall be provided.
 - (2) Lot areas, widths, and setbacks shall not be reduced below the following minimums:
 - (A) Lots served by centralized sanitary sewer systems:
 - (i) Minimum lot area: 5,000 square feet.
 - (ii) Minimum lot width: 50 feet.
 - (iii) Minimum front yard: 25 feet.
 - (iv) Minimum side yard: Zero feet.
 - (v) Minimum rear yard: 25 feet.
 - (B) Lots served by private on-site waste treatment systems:
 - (i) Minimum lot area: 20,000 square feet.
 - (ii) Minimum lot width: 70 feet.
 - (iii) Minimum front yard: 25 feet.
 - (iv) Minimum side yard: 15 feet.
 - (v) Minimum rear yard: 25 feet.
 - (3) All other density and dimensional standards of this article shall apply to lots whose areas are averaged.
 - (4) All lots that are large enough to be further subdivided shall be deed restricted against further subdivision designating the owner, his heirs, successors, and assigns as the grantee of the easement. The city shall hold a conservation easement on such lots. The restrictions of the easement shall be enforceable either by the grantee, his heirs, successors, and assigns, or by the city.

(Ordinance 1245.1, ex. A, § 9, adopted 4/19/05)

ARTICLE 28.06 - LANDSCAPING AND TREE PRESERVATION

DIVISION 1. - GENERALLY

Sec. 28.06.001. - Title.

This article shall be commonly cited as the landscape ordinance.

(Ordinance 6300.10, ex. A, § 1.1, adopted 2/12/08)

- (a) <u>Generally</u>. The purpose of this article is to provide for the preservation of native trees, prevent the clear-cu *Item 6.* of land, and provide for minimum landscaping and screening requirements, in recognition that trees, landscaping, screening, and buffering protect the health and welfare of the community, while addressing the water conservation and drainage issues particular to the Hill Country region. The purpose of this article is also to enhance the community's ecological, environmental, and aesthetic qualities.
- (b) <u>Health, welfare, and general well-being</u>. Preserving and improving the natural environment, and maintaining a working ecological balance, are of increasing concern to the city. The fact that the proper use of landscape elements can contribute to the processes of air purification, oxygen regeneration, water absorption, water purification, and noise, glare, and heat abatement as well as the preservation of the community's aesthetic qualities indicates that the use of landscape elements is of benefit to the health, welfare, and general well-being of the community, and therefore it is proper that the appropriate use of such elements be required.
- (c) <u>Water conservation and drainage</u>. The city experiences frequent droughts and is characterized by thin-soiled rock formations; therefore, it is the purpose of this article to encourage the use of drought-resistant vegetation and landscaping that minimizes runoff and erosion.

(Ordinance 6300.10, ex. A, § 1.2, adopted 2/12/08)

Sec. 28.06.003. - Scope.

This article applies to all commercial property within the incorporated municipal boundaries (i.e., city limits) for which site plan approval by the city is required under the city's Code of Ordinances. This article applies to actions taken after the date of enactment.

(Ordinance 6300.10, ex. A, § 1.3, adopted 2/12/08)

Sec. 28.06.004. - Definitions.

- (a) <u>Rules of interpretation</u>. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the 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.
- (b) Specific definitions.

<u>City administrator</u>. The chief administrative officer of the city. The term shall also include the deputy city administrator.

<u>City council</u>. The governing body of the city.

<u>City of Austin Environmental Criteria Manual</u>. The document promulgated by the City of Austin, which is commonly used throughout the region and is widely regarded as the standard in the development community, as may be amended.

<u>City of Austin Grow Green Guide</u>. The document promulgated in part by the City of Austin, entitled "Native and Adapted Landscape Plants: An Earthwise Guide for Central Texas," as may be amended.

<u>*City permit*</u>. A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a city ordinance, regulation, or rule in order to develop, construct, and operate the improvements on the property.

<u>Code</u>. The Code of Ordinances enacted by the city, as may be amended from time to time.

<u>DBH (diameter at breast height)</u>. The tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

Designated tree. Any of the following:

- (1) A hardwood tree having a trunk of eight inches in caliper or greater measured at DBH;
- (2) A multi-trunked hardwood tree having a total trunk DBH of 30 inches or more (not counting trunks less than eight inches in diameter); or
- (3) A cluster of hardwood trees within a ten-foot radius circle having a total trunk DBH of 40 inches or more (not counting trunks less than eight inches in diameter).

Escrow. A deposit of a cash bond with the city in accordance with this article.

Extreme drought classification. A D3 classification of drought intensity provided by the National Drought Mitigation Center, with D1 being the least intense and D4 being the most intense. D3 classification, extreme drought areas, result in major crop/pasture losses and widespread water shortages or restrictions. The National Drought Mitigation Center must be consulted to determine the classification for the region.

Impervious cover. Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevent infiltration. For further clarification on what is considered impervious cover, refer to the city's water quality protection ordinance (article <u>10.03</u>).

<u>Landscape architect</u>. One whose profession is the decorative and functional alteration and planting of grounds, especially at or around a building site.

<u>Landscaping</u>. Consists of introduced vegetation, as well as related improvements to a lot, including, but not limited to, forming and berming, irrigation systems, landscape subsurface drainage systems, site furnishings, and nonstructural retaining walls.

<u>Natural area</u>. An area where the naturally grown landscaping is left primarily undisturbed, except for the removal of poison ivy, greenbrier, and similar vegetation, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

<u>*Owner*</u>. A person with legal control over property in question.

<u>Person</u>. A human individual, corporation, agency, unincorporated association, partnership, or sole proprietorship, or other legal entity.

<u>TCEQ</u>. The state commission on environmental quality, or its successor agency.

(Ordinance 6300.10, ex. A, § 2, adopted 2/12/08; Ordinance 6300.12, adopted 11/11/14)

Sec. 28.06.005. - Applicability.

This article applies to all new commercial development requiring site plan approval subject to zoning requirements. All properties going through redevelopment through extension, reconstruction, resurfacing, or structural alteration must come into compliance. Site plan approval shall be conditioned on compliance with this article.

(Ordinance 6300.10, ex. A, § 3.1, adopted 2/12/08)

A fund is hereby created in which any cash-in-lieu paid to the city pursuant to the mandates of this article shall be deposited. The fund may be drawn upon by the city to implement landscaping improvements on city land and city controlled rights-of-way.

(Ordinance 6300.10, ex. A, § 3.2, adopted 2/12/08)

Sec. 28.06.007. - Damaging or removing trees.

No person shall damage or remove trees in violation of this article.

(Ordinance 6300.10, ex. A, § 3.3, adopted 2/12/08)

Sec. 28.06.008. - Violations.

It shall be unlawful for any person to violate this article.

(Ordinance 6300.10, ex. A, § 5, adopted 2/12/08)

Sec. 28.06.009. - Enforcement; penalties.

- (a) <u>Compliance</u>. Violators of this article will be required to come into compliance within 60 days, unless a variance has been approved by the city. Compliance with this article may be grounds for withholding of other related pending permits for the project by the city.
- (b) <u>Enforcement</u>. The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to a stop work order, suit for injunctive relief, and/or prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance. Any violation of this article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.
- (c) <u>Criminal penalty</u>. Any person violating any provision of this article shall, upon conviction, be fined a sum not exceeding \$2,000.00 to be deposited in the landscaping fund. Each day that a provision of this article is violated shall constitute a separate offense. An offense under this article is a misdemeanor.
- (d) <u>Civil remedies</u>. Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including but not limited to the following:
 - (1) <u>Injunctive relief</u>. Injunctive relief to prevent specific conduct that violates this article or to require specific conduct that is necessary for compliance with this article;
 - (2) <u>Civil penalty</u>. A civil penalty up to \$500.00 a day to be deposited in the landscaping fund, when it is shown that the defendant was actually notified of the provisions of this article and after receiving notice committed acts in violation of this article or failed to take action necessary for compliance with this article, and other available relief; and
 - (3) <u>Stop work order</u>. In the event work is not being performed in accordance with this article, the city shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

(Ordinance 6300.10, ex. A, § 6, adopted 2/12/08)

Secs. 28.06.010-28.06.050. - Reserved.

DIVISION 2. - STANDARDS

Sec. 28.06.051. - Street trees.

(a) <u>Residential street tree requirements</u>. The list below sets forth the minimum number of trees, per lot, that must be planted prior to the issuance of a certificate of occupancy permit for the dwelling. Trees shall be in the front of a residential lot, including at least one required tree planted in the front yard. Three small trees/large shrubs may be substituted for one required tree. The following minimum standards apply:

Zoning	No. of Required Trees
SF-1	0
SF-2	2
SF-4	2
SF-5	1 per unit
MF	1 per unit
МН	1

- (b) <u>Nonresidential street tree requirements</u>. At least one required tree, shall be planted adjacent to or near the street right-of-way for each 25 feet, or fraction thereof, of linear street frontage. Trees shall be planted between the street right-of-way and any horizontal and vertical improvements. The required number of trees need not be placed uniformly, but may be clustered in groups.
- (c) Trees planted shall be a minimum four inch DBH, staked, and wrapped. Small trees/large shrubs trees shall be a minimum two inch DBH, staked, and wrapped.
- (d) Trees with deep roots may be planted in the area between the sidewalk and road if approved by the city administrator. Trees of species whose roots are known to cause damage to public roadways or other public works are prohibited.

Sec. 28.06.052. - Landscape buffers.

- (a) Landscape buffer planting requirements.
 - (1) All plant material shall be of native or adapted species.
 - (2) All new proposed shade trees shall be a minimum of four inches in diameter.
 - (3) All proposed ornamental trees shall be a minimum of two inches in diameter.
 - (4) All large shrubs shall be a minimum of five-gallon container size and small shrubs/groundcovers a minimum

of one-gallon container size.

- (b) <u>Landscape buffer spacing requirements</u>. The following landscape buffer spacing requirements shall apply to all designated landscape buffers:
 - (1) Shade trees (such as Live Oak or Cedar Elm). One per 50 feet of buffer frontage.
 - (2) <u>Ornamental trees (such as Crape Myrtle or Desert Willow)</u>. One per 25 feet of buffer frontage.
 - (3) Large shrubs, five-gallon (such as Wax Myrtle, DW Yaupon, or Agarita). One per six feet of buffer frontage.
 - (4) <u>Small shrubs/groundcovers, one-gallon (such as Lantana or Liriope)</u>. One per three feet of buffer frontage.
- (c) <u>Landscape buffer widths</u>. The following landscape buffer width requirements shall apply to all designated landscape buffers and shall be measured from the edge of the right-of-way:

	At Arterial Roadways	At Collector Roadways
AG	0	0
SF-1	0	0
SF-2	35 feet	25 feet
SF-4	50 feet	40 feet
SF-5	40 feet	30 feet
MF	50 feet	40 feet
МН	35 feet	25 feet
0	25 feet	25 feet
LR	25 feet	25 feet
GR	25 feet	25 feet
CS	25 feet	25 feet
1	50 feet	50 feet
н	25 feet	25 feet
GUI	25 feet	25 feet
PR	25 feet	25 feet
РР	25 feet	25 feet
		211

Varies

(d) <u>Landscape buffer vegetation</u>. The following landscape buffer vegetation requirements shall apply to all designated landscape buffers:

This buffer area shall contain either native vegetation in the form of trees and bushes left in their natural, undisturbed condition, or, if no such native vegetation exists, shall consist of landscaping in conformance with this article. If the area consists of landscaped plantings, maintenance of such plantings shall be the sole responsibility of the developer or the homeowners' or property owners' association.

Sec. 28.06.053. - Landscape material.

All trees, plants, and vegetation shall comply with the City of Austin "Grow Green" recommended plant guide. Invasive plants in this guide are specifically prohibited.

Sec. 28.06.054. - Landscape plan and tree survey submittal.

Varies

A landscape plan and tree survey shall be submitted to the city with the proposed site plan. The landscape plan shall comply with the landscape requirements. The landscape plan shall be signed and sealed by a landscape architect licensed by the state. The existing tree survey should be signed and sealed by a surveyor licensed by the state.

Sec. 28.06.055. - Parking area landscaping.

- (a) Parking lots and all vehicular parking and maneuvering areas, excluding driveways behind buildings, shall contain areas constructed, planted, and maintained as landscaped islands, peninsulas, or medians.
- (b) The minimum total area in landscaped islands, peninsulas, or medians in the parking lots in front of buildings shall be 90 square feet for each 12 parking spaces.
- (c) One tree is required for every six parking spaces. Tree preservation is encouraged, thus one existing tree that is at four inches DBH shall count for two new trees.
- (d) No parking space shall be located further than 50 feet from a landscaped island, peninsula, median, or tree. They shall be located evenly through the parking areas; however, the location of landscaped islands, peninsulas, and medians may be adjusted to accommodate existing trees or other natural features.
- (e) Landscape terminal islands (end islands) shall be located at the end of all parking modules in a configuration to allow for turning radii of intersecting aisles to protect parked vehicles, provide for visibility, confine moving traffic to aisles and driveways, and provide space for landscaping. Medium and tall shrubs are prohibited on internal islands to maintain visibility.
- (f) All landscaped islands shall have curbs except when utilizing low impact development techniques to capture and utilize runoff for irrigation purposes.
- (g) Paving over the critical root zone is discouraged and must be approved by the city administrator. All approved paving shall be porous pavement to allow water and air exchange.

Sec. 28.06.056. - Screening of dumpsters and building service equipment.

(a) For outdoor condensers, utility huts, and other building service equipment (other than a rooftop), such

equipment shall be reasonably screened from view on all sides using a masonry wall and vegetative screer *Item 6.* at least two varieties of plant material from the "grow green" plant guide, that, at maturity, are at least the height of the equipment to be screened.

- (b) All refuse and/or recycling containers shall be reasonably screened with landscaping from public view and the view of adjoining properties.
- (c) The opening for removal of the dumpster for collection shall be a minimum of 12 feet to allow proper service access. An additional ten feet in width is required for every additional dumpster.
- (d) All durable materials used in constructing the dumpster screening masonry wall system shall be consistent with and complement the primary structure.
- (e) The orientation of the dumpster opening shall not face the street or public sidewalk unless approved by the city administrator.

Sec. 28.06.057. - Maintenance requirements.

The owner shall be responsible for (unless otherwise specified herein):

- (1) Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice;
- (2) The repair or replacement of required landscape structures (walls, fences, etc.) to a structurally sound condition;
- (3) The regular maintenance, repair, or replacement, where necessary, of any screening or buffering;
- (4) Replacing planted trees if they die or become diseased beyond repair within five years after planting; and
- (5) Repairing damage to landscaped areas, structures, screening, buffering, or trees as a result of ingress or egress from site easements by authorized or unauthorized parties.

Sec. 28.06.058. - Integrated pest management.

Air integrated pest management plan (IPM) shall be submitted with the site plan. The IPM shall include the fertilizer ratios, brands, and types of fertilization application methods to be used. Fertilizers must be phosphate-free.

Sec. 28.06.059. - Tree preservation.

- (a) A grading and tree survey shall be submitted with the site plan.
- (b) The tree survey shall include all existing, live, healthy trees with an eight-inch DBH in diameter and larger. The survey shall indicate the size (DBH) and species of tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles using the formula of one foot of radius for every one inch of trunk diameter. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed).
- (c) Healthy designated class I and II trees (as defined by the City of Austin Environmental Criteria Manual) that require removal to accommodate the development shall be replaced at a ratio of 1:1, or cash-in-lieu may be paid to the city, the amount equal to the cost of nursery stock required to replace the caliper amounts lost and the

cost of installation on a per-unit basis, not to exceed \$100.00 per caliper inch or \$6,000.00 per acre (prorate *Item 6.* sites of more or less than one acre) for the entire site. Trees identified as distressed shall not be included in tree preservation requirements evaluation.

- (d) Pre- and post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free.
- (e) The planting, preserving, and maintaining of trees which are contagiously diseased trees, or the storage of cut oak unless first determined by a certified arborist to be devoid of oak wilt or properly treated, shall be deemed a public nuisance and is prohibited.
- (f) During construction, take measures to protect trees, including rigid fencing, shielding, and signage, as necessary. Rigid fencing shall be placed with a radius of at least ten feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of wood, chainlink, or other solid material approved by the city administrator. Stakes shall be no more than six feet apart and at least one and one-half deep into the ground. Rigid fencing shall be at least three feet in height.
- (g) The city administrator or designee shall inspect and approve installed tree protection before issuance of any permit to commence with any construction activity.
- (h) Tree protection shall remain in place until final landscaping installation as approved by the city administrator or designee.
- (i) Parking or storing of vehicles, equipment or materials allowed within the critical root zone is prohibited.

Sec. 28.06.060. - Irrigation requirements.

- (a) An irrigation plan is required as part of the site plan and will be prepared by a licensed irrigator (i.e., licensed landscape architect or engineer). The plan should include rain/freeze sensors on all controllers. The irrigation plan should provide drip irrigation in shrub beds where appropriate and bubblers on all trees.
- (b) Turf grass plantings may be Buffalo, Zoysia, or Bermuda. St. Augustine is expressly prohibited.
- (c) Landscaped areas must be mulched to reduce evaporation and preserve water.

(Ordinance 6300.11, adopted 4/8/14)

Sec. 28.06.061. - Drought conditions.

- (a) During extreme drought classifications for this region as determined by the National Drought Mitigation Center, the city administrator, or designee, may accept a fiscal deposit of the amount equal to the cost of purchasing and installing the trees and other required landscaping into the city's drought tree fund in lieu of the installation of trees and other landscaping required by this chapter for the issuance of a certificate of occupancy permit, or the city administrator may accept an escrow equal to the cost of purchasing and installing the trees and other required by this chapter for the issuance of a certificate of occupancy permit, or the city administrator may accept an escrow equal to the cost of purchasing and installing the trees and other required landscaping. The city shall only accept the fiscal deposit or escrow if an erosion control plan consistent with <u>section 28.04.016</u> of this code has been reviewed and accepted by the city administrator. Failure to maintain and adhere to an approved erosion control plan during periods of extreme drought classification shall be deemed a violation and the fines and penalties under <u>section 28.06.009</u> of this article shall apply.
- (b) Persons requesting that the city accept a fiscal deposit in lieu shall provide the city with written documentation from an entity that sells trees and landscaping the cost of purchasing and installing the trees and other landscaping required by this chapter.
- (c) If no cost for the installation of trees and landscaping required by this chapter is provided to the city, the city

shall require 66 percent of the cost of the trees and landscaping to be paid as the installation cost in addition the cost to purchase the trees and landscaping.

- (d) Any fiscal deposits for trees and landscaping paid to the city pursuant to this section shall be held in escrow. The escrow may be drawn upon by the city to implement tree and landscaping requirements for the depositing property owner, or the funds shall be released to the depositing property owner to implement tree and landscaping requirements within 30 days when the drought mitigation center determines that this region is no longer in an extreme drought condition or higher classification. Failure to implement the tree and landscaping requirements within 30 days of release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties under section 28.06.009 of this article shall apply.
- (e) Whenever necessary to enforce any provision of this article or implement tree and landscaping requirements on the depositing property owner's property, city staff, or the city's contractor, may enter upon depositing property owner's property at any reasonable time to inspect or perform any duty imposed by this article during an extreme drought classification for this region. If entry is refused, the city shall have recourse to every remedy provided by law and equity to gain entry.
- (f) The city is the custodian of any cash funds or bonds on deposit in the property owner's escrow account. The city has a fiduciary duty to the depositing property owner and may dispose of the escrowed funds only in accordance with this section.

(Ordinance 6300.12, adopted 11/11/14)

ARTICLE 28.07 - DRIPPING SPRINGS TECHNICAL CRITERIA

Sec. 28.07.001. - Adopted and references to the technical criteria standard specifications (TCSS).

The Dripping Springs Technical Criteria (DSTC), Ordinance No. 2019-39, adopted by the city on October 15, 2019, is included at the end of this chapter as exhibit B. Any reference to the technical criteria standard specifications or TCSS in the Code of Ordinances shall henceforth be a reference to the document attached as exhibit B.

Sec. 28.07.002. - Title.

This article shall be commonly known as the Dripping Springs Technical Criteria (DSTC).

Sec. 28.07.003. - Purpose.

The DSTC establishes uniform design practices; it neither replaces the need for engineering judgment nor precludes the use of any information relevant to the accomplishment of the purposes of this article. Other generally accepted or innovative and effective engineering procedures may be used in conjunction with, or instead of, those prescribed by the DSTC if approved by the city engineer.

Sec. 28.07.003. - Applicability.

The DSTC shall govern construction activities within the incorporated limits and the ETJ of the city.

Sec. 28.07.004. - Technical criteria.

The DSTC shall include the following technical design criteria, standard specifications, and details for:

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- (1) Transportation facilities.
- (2) Water and wastewater facilities.
- (3) Drainage facilities.
- (4) Environmental management facilities.
- (5) Buildings.

Sec. 28.07.005. - Amendment of technical criteria.

The DSTC can be amended by the city administrator. Any amendment shall require immediate update to the DSTC and shall be made available to the public. Any amendment to the DSTC in conflict with current ordinance shall be presented to city council.

(Ordinance 2019-39, adopted 10/15/19)

EXHIBIT A. - SUBDIVISION ORDINANCE

SECTION 1. - GENERAL PROVISIONS

1.1. - Popular name.

This chapter shall be cited as the "Subdivision Ordinance."

1.2. - Plat required.

No subdivision plat shall be recorded until a final plat, accurately describing the property, has been approved in accordance with this chapter, and with other applicable city regulations. No certificate of acceptance for required public improvements shall be issued by the city for any parcel of land or plat until a final plat has been approved in accordance with this chapter; and either:

- (a) All improvements required by this chapter have been constructed and accepted by the city; or
- (b) Assurances for completion of improvements have been provided in accordance with this chapter.

1.3. - Applicability.

- 1.3.1. The city council hereby extends the application of this chapter to the extraterritorial jurisdiction (ETJ) of the City of Dripping Springs, as that area may exist from time to time in accordance with chapter 42 of the Texas Local Government Code. This chapter shall be applicable to the filing of plats and the subdivision of land, as that term is defined herein and in chapter 212 of the Local Government Code, within the city limits of the city and its ETJ, as they may from time to time be adjusted by annexation, disannexation, ETJ expansion, or ETJ reduction. Adoption of this chapter shall in no way limit or curtail the remedies and rights provided to the City by Texas Local Government Code chapter 212 with regard to the control and approval of subdivisions and plats both within the city and within its ETJ.
- **1.3.2.** The provisions of this chapter shall apply to the following forms of land subdivision and development activity within the city and its ETJ:
 - (a) The creation of a one legal lot through platting or a division of a tract in two or more parts to lay out a subdivision of the tract, including an addition to a city, to lay out suburban, building, other lots or units, o

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lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use *Item 6.* the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this ordinance includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method; or

- (b) All subdivisions of land whether by metes and bounds division, condominium declaration or by plat, which were outside the jurisdiction of the city's subdivision regulations in Hays County, Texas and which subsequently came within the jurisdiction of the city's subdivision regulations through:
 - (1) Annexation; or
 - (2) Extension of the city's ETJ; or
- (c) The combining of two or more contiguous tracts, lots, sites or parcels for the purpose of creating one or more legal lots in order to achieve a more developable site, except as otherwise provided herein; or
- (d) For tracts where any public improvements are proposed; or
- (e) The development of a manufactured home subdivision or RV park.

1.4. - Exemptions.

- **1.4.1.** The provisions of this chapter shall not apply to:
 - (a) Development of land legally platted and approved prior to the effective date of this chapter, and for which no resubdivision, or site development permit is required by city ordinance; or
 - (b) Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration is occurring; or
 - (c) Existing cemeteries complying with all state and local laws and regulations; or
 - (d) A lot or lots created or changed by an acquisition by an entity with the power of eminent domain or dedication or by contract and conveyance in lieu of condemnation; or
 - (e) When a building permit is requested for unplatted or already platted parcels for one or more of the following activities:
 - (1) Replacement or reconstruction of an existing primary single-family or duplex structure, but not to exceed the square footage, nor deviate from the original location, of the original structure;
 - (2) Building additions, such as increasing the square footage of an existing residence or other structure, of not over 100 percent of the existing structure's value, and of not over 50 percent of the gross floor area of the structure;
 - (3) Accessory buildings (as defined in the zoning ordinance);
 - (4) Remodeling or repair which involves no expansion of square footage; or
 - (5) Moving a structure off a lot or parcel, or for demolition permits.
 - (f) A division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated.
 - (g) Minor plat or amending plat.
- **1.4.2.** All applications for plat approval, including final plats, that are pending on the effective date of this chapter and which have not lapsed shall be reviewed under the regulations in effect immediately preceding the effective date of this chapter. If a lot or property becomes nonconforming due to condemnation by a governmental entity, i

may, but is not required to, bring itself into conformance with this ordinance. However, if the owner of suc *Item 6.* or property desires to subdivide the lot or property, conformance with this ordinance is required.

1.5. - Minimum standards.

The principles, standards and requirements provided for herein shall be minimum requirements for the platting and developing of subdivisions for the promotion of the public health, safety and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

1.6. - Waivers.

- **1.6.1. Presumption.** There shall be a presumption against waivers.
- **1.6.2.** General. Where the city administrator finds that undue hardships will result from strict compliance with a certain provision(s) of this chapter, or where the purposes of these regulations may be served to a greater extent by an alternative proposal, the city may approve a waiver from certain regulations as listed within this section so that substantial justice may be done and the public interest is secured, provided that the waiver shall not have the effect of nullifying the intent and purpose of these regulations, and further provided that the city administrator shall not approve a waiver unless it shall make findings based upon the evidence presented to it in each specific case that:
 - (a) Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity; and
 - (b) The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought, and are not applicable generally to other property;
 - (c) Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
 - (d) The waiver will not in any manner vary the provisions of the zoning ordinance, planned development district ordinance, or comprehensive plan, or any other adopted plan(s) or ordinance(s) of the city;
 - (e) An alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein; and
 - (f) 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.

Such findings of the city administrator, together with the specific facts upon which such findings are based, shall be documented in writing. A waiver from any provision of this chapter may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.

- **1.6.3. Criteria.** Where the city administrator finds that the imposition of any development exaction pursuant to these regulations exceeds reasonable benefit to the property owner, or is so excessive as to constitute confiscation of the tract to be platted, it may approve a full or partial, at its discretion, waiver to such requirements, so as to prevent such excess.
- **1.6.4.** Conditions. In approving a waiver, the city administrator may require such conditions as will, in its judgment, secure substantially the purposes described herein. The applicant's willingness to have the tract annexed into

city limits may be contemplated as a condition, when possible and appropriate, as determined by the city d Item 6.

1.6.5. Procedures.

- (a) An application for a waiver shall be submitted concurrently with the submission for a plat.
- (b) The application shall state fully the grounds for the application, and all of the facts relied upon by the applicant.
- (c) Where a hardship is identified during review pursuant to the zoning ordinance or during subdivision plat review pursuant to this chapter which requires issuance of a waiver from a provision in this chapter, the city administrator may approve a conditional (or temporary) waiver from that provision in this chapter in conjunction with plat approval by the planning and zoning commission.
- 1.6.6. Waivers. Deviations from this ordinance that can be an administratively approved waiver include:
 - (a) Block length as defined by section 11.21.
 - (b) Cul-de-sac requirements +as defined by section 11.22.
 - (c) Dead end as defined by section 11.23.
 - (d) Construction of new streets as defined by section 11.25.
 - (e) Construction standards as defined by section 11.26 [sic].
 - (f) Alley length deviations as defined by section 12.1.
 - (g) Easements as defined by section 12.2.
 - (h) Water quality buffer zones as defined by section 12.2.3.
 - (i) Sidewalks if the reason is for avoiding obstacles, trees, and natural features. Provided they meet ADA requirements.
 - (j) Collector streets (section <u>11.3</u>) intersecting streets intersections with major thoroughfares.
 - (k) Blocks as defined by section 13.
 - (I) Joint access easements for commercial properties as required by section 14.2.
 - (m) Irregular-shaped lots as defined by section 14.3.
 - (n) Side lots or units as defined by section 14.4.

Any deviation not listed in this subsection shall only be requested through the variance process listed below.

1.6.7. Payment of indebtedness. No person who owes delinquent taxes, delinquent paving assessments, delinquent fees, or any other delinquent debts or obligations to the City of Dripping Springs, and which are directly attributable to a piece of property, shall be allowed to receive approval for any plat or replat until the taxes, assessments, debts or obligations directly attributable to said property and owed by the property owner or a previous owner, shall have been first fully discharged by payment, or until an arrangement satisfactory to the city administrator has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence or proof that all taxes, assessments, debts or obligations have been paid at the time of submission for any application for approval under this chapter.

1.7 - Variances.

- **1.7.1. Presumption.** There shall be a presumption against variances.
- **1.7.2.** General. Where the city's planning and zoning commission (P&Z) finds, that undue hardships will result from strict compliance with a certain provision(s) of this chapter, or where the purposes of these regulations may be served to a greater extent by an alternative proposal, the city may approve a variance from any portion of the

regulations so that substantial justice may be done and the public interest is secured, provided that the wa *Item 6.* variance shall not have the effect of nullifying the intent and purpose of these regulations, and further provided that the city council shall not approve a variance unless it shall make findings based upon the evidence presented to it in each specific case that:

- (a) Granting the variance will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity;
- (b) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought, and are not applicable generally to other property;
- (c) Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
- (d) The variance will not in any manner vary the provisions of the zoning ordinance, planned development district ordinance, or comprehensive plan, or any other adopted plan(s) or ordinance(s) of the city;
- (e) An alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein; and
- (f) The waiver variance 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.

Such findings of the planning and zoning commission, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the planning and zoning commission meeting at which a variance is considered. A variance from any provision of this chapter may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.

- **1.7.3. Criteria.** Where the planning and zoning commission finds that the imposition of any development exaction pursuant to these regulations exceeds reasonable benefit to the property owner, or is so excessive as to constitute confiscation of the tract to be platted, it may approve a full or partial, at its discretion, waiver to such requirements, so as to prevent such excess.
- **1.7.4. Conditions.** In approving a variance the planning and zoning commission may require such conditions as will, in its judgment, secure substantially the purposes described herein. The applicant's willingness to have the tract annexed into the city limits may be contemplated as a condition, when possible and appropriate, as determined by the planning and zoning commission.
- 1.7.5. Procedures.
 - (a) An application for a variance shall be submitted in writing by the property owner before the plat is submitted for the consideration of the P&Z or other approving authority. The application for variance must be submitted not less than 30 days prior to the P&Z meeting at which the request will be considered.
 - (b) The application shall state fully the grounds for the application, and all of the facts relied upon by the applicant.
 - (c) Where a hardship is identified during review pursuant to the zoning ordinance or during subdivision plat review pursuant to this chapter which requires issuance of a variance from a provision in this chapter, the P&Z may recommend a conditional (or temporary) variance from that provision in this chapter in conjunction with plat approval. Before a preliminary plat can be approved with a conditional or temporary variance fr 286

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this chapter, the conditional or temporary waiver shall receive final approval before filing an application *Item 6.* preliminary plat that no new information or reasonable alternative plan exists which, at the determination of the P&Z, voids the need for a waiver/suspension. All waivers variances shall have final approval or disapproval by the P&Z.

- **1.7.6. Criteria for variances for street exactions.** Where the city council finds that the imposition of any dedication or construction requirement for streets pursuant to these regulations exceeds reasonable benefit to the property to be platted, it may approve a variance for such requirements so as to prevent such excess. In order to qualify for a variance under this section, the property owner shall demonstrate that the costs of right-of-way dedication and construction of non-local streets imposed pursuant to these regulations substantially exceeds the incremental costs of providing land and transportation improvements necessary to offset the additional traffic impacts generated by, or attributable to, the development upon the transportation network serving the property, including that which may be generated by or attributed to other phases to be platted in the future.
- **1.7.7.** Variances. Any deviation requested not listed as a waiver in this ordinance may only be approved through the variance process discussed within this section 1.7. These variances may include but are not limited to:
 - (a) Access easement in lieu of frontage in city limits or for property for which some part is in the city limits.
 - (b) Lot size.
 - (c) Building lines and setbacks.
 - (d) Sidewalk requirements.
 - (e) Private Streets, section 11.9.6.

1.8. - Right to deny filing, hearing, and plat.

The city may deny a filing, hearing, and any approval pursuant to this chapter if the applicant does not submit the information and fees required by this chapter.

1.9. - Misrepresentation of facts.

It shall be a violation of this chapter for any person to knowingly or willfully misrepresent, or fail to include, any information required by this chapter in any plat application, during any conference with a city official, during any public hearing or meeting of the P&Z, or city council. Such a violation shall constitute grounds for denial of the plat.

1.10. - Title.

The title shall identify the document as a "Final Plat" of the _____ Subdivision, Block ____, Lot(s) ____, Being a Replat of Block ____, Lot(s) ____ of the _____ Subdivision within the City of Dripping Springs, Texas (or within the extraterritorial jurisdiction of the City of Dripping Springs, Texas).

1.11 - Uniform submittal schedule.

Each submission for a plat shall be governed by the uniform submittal schedule adopted annually by ordinance.

SECTION 2. - DEFINITIONS

2.2. - Specific.

<u>Access</u>: A way or means of approach (public or private) to provide vehicular or pedestrian physical entrance to a property which shall include public or private right-of-way dedicated to this use.

<u>Administrative officers</u>: Any officer of the city referred to in this chapter by title, including but not limited to the city administrator, deputy city administrator, city secretary, or city engineer, shall be the person retained in that position by the city. This definition shall also include planning, legal, financial, traffic engineering and other consultants retained by the city to supplement or support existing city staff, as deemed appropriate by the city.

<u>Amenity</u>: An improvement to be dedicated to the public or to the common ownership of the lot owners of the subdivision and providing an aesthetic, recreational or other benefit, other than those prescribed by this chapter.

<u>Applicant</u>: A person or entity who submits to the city an application for an approval required by this chapter. To be qualified as an applicant under this chapter, the person or entity must have sufficient legal authority or proprietary interests in the land to commence and maintain proceedings under this chapter. The term shall be restricted to include only the property owner(s), or a duly authorized agent and representative of the property owner. In other jurisdictions, the term is sometimes referred to as the "developer", "subdivider", "builder," or other similar title.

<u>Application</u>: A written request to the city for an approval required by this chapter that contains all information required by this chapter and that has been deemed administratively complete by the city.

<u>Base flood</u>: The flood having a one percent chance of being equaled or exceeded in any given year. This type of flood is also commonly referred to as the 100-year flood.

<u>Block length or street length</u>: For a residential subdivision, that distance measured along the centerline of the street from the intersection centerpoint of one through street to the intersecting centerpoint of another street, or to the midpoint of a cul-de-sac. The through street referred to above shall not be a cul-de-sac, a dead-end street, or a looped street, but shall be a street which clearly has two points of ingress from two different directions.

Bond: Any form of a surety bond in an amount and form deemed satisfactory by the city.

<u>Building setback line</u>: The line within a property defining the minimum horizontal distance between a building or other structure and the adjacent street right-of-way line, property line, a creek, or some other specific feature.

<u>Capital improvements program (CIP)</u>: The official proposed schedule, if any, of all future public projects listed together with cost estimates and the anticipated means of financing each project, as adopted by city council.

<u>Cedar</u>: The tree also known as the Ash Juniper.

<u>City</u>: The City of Dripping Springs, an incorporated municipality located in Hays County, Texas.

<u>*City administrator*</u>: The city's chief administrative officer, as appointed by the city council. The term also includes t <u>Item 6.</u> deputy city administrator, or the city administrator's designee.

<u>*City attorney*</u>: The lawyer or firm of attorney who has been specifically employed by the city to assist in legal matters. This term shall also apply if the city retains a person to perform the functions of city attorney as an official city employee.

<u>City council</u>: The governing body of the City of Dripping Springs, Texas.

<u>City engineer</u>: The licensed professional engineer, or firm of licensed professional consulting engineers, that has been specifically employed by the city to assist in engineering-related matters. This term shall also apply if the city retains a person to perform the functions of city engineer as an official city employee.

City hall: The City of Dripping Springs' primary administrative office.

<u>City limits</u>: The incorporated, municipal boundaries of the City of Dripping Springs.

<u>City planner</u>: The practicing, professional land planner or planners, firm of professional land planners, of a consulting city planner that has been specifically employed or contracted by the city to assist in planning- and zoning-related matters. This term shall also apply if the city retains a person to perform the functions of city planner as an official city employee.

<u>Commission</u>: The planning and zoning commission (P&Z) of the City of Dripping Springs, Texas.

<u>*Common element*</u>: All portions of a condominium other than the units and includes both general and limited common elements.

<u>Comprehensive plan</u>: This document setting forth the guiding land use principles and goals of the city. The document, or collection of documents, delineates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, water and wastewater facilities, and other public and private developments and improvements. The phrase "comprehensive plan" shall mean the comprehensive plan of the city and adjoining areas as adopted by the city council, including all its revisions and plan elements (including, but not limited to, the future land use plan, transportation plan, parks and open space plan, etc.).

<u>Concept plan</u>: A drawing of the overall conceptual layout of a proposed development, superimposed upon a topographic map which generally shows the anticipated plan of development, and which serves as a working base for noting and incorporating suggestions of the city's administrative officers, the P&Z, and others who are consulted prior to preparation of the preliminary plat. In other jurisdictions, the term is sometimes referred to as a "preliminary site plan" or a "land study."

<u>Condominium</u>: A form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners. Condominiums are established in accordance with the requirements of the Texas Uniform Condominium Act codified in chapter 82 of the Texas Property Code. A condominium is a form of ownership and not a specific building type or style.

<u>Condominium association</u>: An association, organized pursuant to section 82.101 of the Texas Property Code, whose members consist of owners of units in a condominium, which administers and maintains the common property and common elements of a condominium.

<u>Construction plan</u>: A drawing with specifications of the location, character, dimensions, and details, including all ri of-way which may be required, of the work to be conducted in accordance with the City of Dripping Springs Technical Construction Standards and Specifications available for inspection at city hall.

<u>Construction plans or drawings</u>: The maps or drawings accompanying a final plat and showing the specific location and design of public improvements to be installed in the subdivision in accordance with the requirements of the city as a condition of approval of the plat. The term includes construction documents, plans and specifications.

<u>Contiguous</u>: Lots are contiguous when at least one boundary line or point of one lot touches a boundary line, or lines, or point of another lot.

<u>Development</u>: The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure on land. The term also includes any mining, excavation, landfill, or land disturbance.

<u>Development agreement</u>: A contract entered into by the applicant and the city, by which the applicant promises to complete the required public improvements within the subdivision within a specified time period. The agreement may also include provisions documenting a mutual understanding regarding annexation, land use, applicable regulations, funding, open space, and other arrangements as allowed by state law.

Easement: The word "easement" shall mean an area for restricted use on private property upon which the city or public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, and other improvements or growths which in any way endanger or interfere with the construction, maintenance, or efficiency of its respective systems within said easements. The city, public utilities, and utilities which have agreements with the city regarding the right-of-way, shall, at all times, have the right of ingress and egress to and from and upon easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or part of their respective systems without the necessity at any time of procuring the permission of anyone.

<u>Engineer</u>: A person duly authorized and licensed under the provisions of the Texas Engineering Registration Act to practice the profession of engineering.

Escrow: A deposit of cash with the city in accordance with this chapter.

<u>ETJ</u>: The extraterritorial jurisdiction of the City of Dripping Springs.

FEMA: The Federal Emergency Management Agency of the U.S. government.

<u>Filing</u>. The uniform submittal date on which an administratively complete application for a plan, plat, or permit is submitted to the city on a day or date on which it is accepting filing of such plans, plats, and permits pursuant to the uniform submittal schedule.

Impervious cover: Any material that prevents absorption of stormwater into the ground.

<u>Land planner</u>: Persons, including surveyors or engineers, who possess and can demonstrate a valid proficiency in the planning of residential, nonresidential and other related developments, such proficiency often having been acquired by education in the field of landscape architecture or other specialized planning curriculum, or by actual experience and practice in the field of land planning, and who may be certified as a member of the American Institute of Certified Planners (AICP).

<u>Landscape architect</u>: A design professional licensed by the State of Texas, who deals primarily, but not necessarily exclusively, with site work, such as plant selection and irrigation systems as well as the design of ground works considering the need for drainage, utilities installations, buildings, [and] grading while creating a pleasing appearance.

LCRA: The Lower Colorado River Authority, or a successor agency.

Lot: A divided or undivided tract or parcel of land having frontage on a public street, and which is, or which may in *Item 6.* future be, offered for sale, conveyance, transfer or improvement; which is designated as a distinct and separate tract; and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record at the county. Also known as parcel, tract, or plot.

Lot area : The area of a lot contained within its boundaries, exclusive of any portion within a public or private street or street right-of-way.

Lot, corner: A lot located at the junction of two or more streets.

Lot coverage: The ratio of gross floor area of all buildings, structures, and all areas associated with driveways and parking lots on a lot, to the total lot area, expressed as a percentage.

Lot depth: The distance between the front lot line and rear lot line, measured at the mid-points of the front and rear lines.

Lot, flag: A lot located behind another lot connected to the street by an area narrower than the full lot width. Also known as a panhandle lot.

Lot frontage: The distance between the side lot lines, measured at the point where the side lot lines intersect the street right-of-way. All sides of a lot that abuts a street shall be considered frontage.

Lot, interior: A lot other than a corner lot.

Lot line : A line or series of lines bounding a lot as defined herein.

Lot line, front: A lot line abutting a public or private street, or access easement. On a corner lot, the shorter lot line abutting public or private street or access easement shall be considered the front lot line. On a through lot, the lot line abutting the public or private street providing the primary access to the lot shall be considered the front lot line.

Lot line, rear: A lot line defined as other than front or side lot line. In the case of an irregularly shaped lot or a lot bounded by only three lot lines, a line within the lot having a length of ten feet, parallel to and most distant from the front lot line shall be interpreted as the rear lot line for the purpose of determining required yards, setbacks and other provisions of these regulations.

Lot line, side: A lot line that is not a front lot line or a rear lot line.

Lot line, street: Any lot line abutting an existing or dedicated street or right-of-way.

Lot width: The distance between the side lot lines, measured at the front setback line.

Major subdivision : This is the same as a "major plat."

<u>Manufactured home subdivision</u>: A parcel of land that is designed, improved and intended for the long-term or shortterm placement of individually owned mobile home units or HUD-Code manufactured homes on lots or units that can be leased or purchased outright by the owners of the mobile home units. Facility may include a residence for the owner or manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities. The term may be defined in other jurisdictions as a "mobile home park."

Minor subdivision : This is the same as a "minor plat."

<u>Off-site facilities or improvements</u>: "Off-site" facilities shall mean those facilities or improvements that are required to serve the site but that are not located within the boundaries of the plat, and are not required to be constructed or improved immediately adjacent to the property to serve the development. These [include] new or oversized improvement

for streets, sewer lines, water lines and storm drainage facilities, as well as the excess capacity of facilities such as wal *Item 6.* storage tanks and wastewater treatment plants available for new development.

<u>On-site facilities or improvements</u>: These are the existing or proposed facilities or improvements constructed within the property boundaries of the plat, and the existing or proposed facilities required to be constructed or improved immediately adjacent to the property that are needed to serve the development. Facilities and improvements include, but are not limited to, streets, alleys, water lines, sewer lines, storm drainage facilities, sidewalks, screening devices, and curbs and gutters.

<u>Owner</u>: Any person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent thereof, that has sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this chapter. In any event, the term "property owner" shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer, of land sought to be subdivided.

<u>Pavement width</u>: The portion of a street that is available for vehicular traffic. Where curbs are used, it is the portion from the back of one curb to the back of the opposite curb.

Perimeter street: Any existing or planned street which abuts the subdivision or addition to be platted.

<u>*Periphery*</u>: For purposes of compliance with the notice requirements of this chapter, the perimeter of the tract proposed for subdivision.

<u>Permit</u>: A license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain from the city to perform an action or initiate, continue, or complete a project for which the permit is sought. A preliminary plat, final plat, replat, and amending plat are examples of permits addressed under this chapter.

<u>Person</u>: Any individual, association, firm, corporation, governmental agency, political subdivision, or legal entity of any kind.

<u>P&Z</u>: The planning and zoning commission of the City of Dripping Springs, Texas.

<u>Plat</u>: This means a preliminary plat, final plat, amending plat, minor plat or replat, as determined by the context.

<u>Amending plat</u>: A revised plat correcting minor errors or making limited changes to the original final plat or as otherwise defined by chapter 212 of the Texas Local Government Code.

<u>Final plat</u>: The one official and authentic map of any given subdivision of land prepared from actual field measurement and staking of all identifiable points by a surveyor or engineer, with the subdivision location referenced to a survey corner, and with all boundaries, corners and curves of the land division sufficiently described so that they can be reproduced without additional references. The final plat of any lot, tract or parcel of land shall be recorded in the land records of Hays County, Texas. An amending plat and replats are also final plats.

<u>Major plat</u>: All plats not classified as minor plats, including but not limited to subdivisions of more than four lots, or any plat that requires the construction of a new street (or portion thereof), on-site drainage facilities, or the extension of a municipal facility as required by this or any other city ordinance.

<u>Minor plat</u>: A subdivision resulting in four or fewer lots or units, provided that the plat is for conveyance purposes only with no development or construction of roads or public improvements proposed, and provided that the plat does not create any new easements for public facilities, nor the extension of any municipal utility facilities to serve any lot within the subdivision.

<u>Preliminary plat</u>: The graphic expression of the proposed overall plan for subdividing, improving and developin <u>Item 6</u>. tract, showing in plan view the proposed street and lot layout, easements, dedications and other pertinent features, with such notations as are sufficient to substantially identify the general scope and detail of the proposed development.

<u>Replatting or replat</u>: This is the resubdivision of any part or all of a block or blocks of a previously platted subdivision, addition, lot or tract. Replats eliminate the prior plats as to the area replatted.

<u>Project</u>: An endeavor over which the city exerts its legal jurisdiction, and for which one or more permits from the city are required to initiate, continue, or complete the endeavor.

Public improvements: Facilities, infrastructure and other appurtenances, typically owned and maintained by the city, which serve a public purpose in providing a needed service or commodity, such as wastewater collection and treatment and water storage and distribution, and which protect the general health, safety, welfare and convenience of the city's citizens, including efficiency in traffic circulation and access for emergency services. Required public improvements may include, but shall not be limited to, street and alley paving, including any necessary median openings and left turn lanes on major thoroughfares; water lines and pumping stations; sanitary sewer lines and lift stations; storm drainage structures and stormwater management devices; water quality and erosion controls; screening and retaining walls; fire lane paving and fire hydrants; landscaping, where such is used for required screening or other required landscaped area, and associated irrigation system; and any required public sidewalks, streetlights and street name signs. The term "public improvements" shall not include facilities or infrastructure of private providers of utility services other than water and wastewater, but shall be deemed to include facilities and infrastructure that the city would normally require of a development, but which will be owned and maintained by an entity such as a homeowners' association, as in the case of private streets.

<u>*Review*</u>: Shall be construed to mean "to read, analyze, assess and act upon" a development application.

<u>*RV park*</u>: A parcel of land that is designed, improved, or intended to be used for short- or long-term occupancy by mobile homes/trailers or recreational vehicles, including travel trailers, in designated spaces. The facility may include a residence for the owner or manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities. This term may be defined in other jurisdictions as a "trailer park."

<u>Street</u>: An improved surface within a right-of-way or easement, public or private, other than an alley, which has been dedicated, deeded, or granted an easement for public use and which affords primary vehicular access to abutting property. Includes the term "road" and "roadway":

- (a) Major thoroughfares, also known as arterial streets or primary thoroughfares, which provide vehicular movement from one neighborhood to another or to distant points within the city, and including freeways or highways leading to other communities.
- (b) Collector streets, also known as feeder streets or secondary thoroughfares, which provide vehicular circulation within neighborhoods, and from local streets to major thoroughfares.
- (c) Local residential streets, also known as minor thoroughfares or streets, which primarily provide direct vehicular access to abutting residential property.
- (d) Private streets are streets which are owned and maintained by a homeowners' association or property owners' association, and which are not dedicated to the public.

<u>Alley</u>: A minor right-of-way, private or public, not intended to provide the primary means of access to abutting lots or units which is used primarily for vehicular service access to the back or sides of properties that derive primary access from a street. The length of an alley segment is to be measured from the right-of-way lines of the streets from which the alley is provided access, including any alley turnouts onto a street, or from the centerpoint of an intersection with another alley which connects to a street.

<u>*Cul-de-sac*</u>: A street having only one outlet to another street, and terminated on the opposite end by a vehicular turnaround or "bulb". The length of a cul-de-sac is to be measured from the intersection centerpoint of the adjoining through street to the midpoint of the cul-de-sac bulb.

<u>Dead-end street</u>: A street, other than a cul-de-sac, with only one outlet.

<u>Overlength street (or alley)</u>: A street segment, or a cul-de-sac or alley segment, which exceeds the maximum length allowed by this chapter, as measured along the centerline of the street from the intersection centerpoint of one through street, which shall not be a cul-de-sac or dead-end or looped street, to the intersecting centerpoint of another through street or, in the case of a cul-de-sac, to the midpoint of the cul-de-sac. For an alley segment, the measurement shall be to the right-of-way lines of the streets from which the alley is provided access, including any alley turnouts, or from the centerpoint of an intersection with another alley which connects to a street.

Perimeter street: Any existing or planned street which abuts the subdivision or addition to be platted.

<u>*Right-of-way*</u>: Land occupied or intended to be occupied by street, crosswalk, alley railroad, road, electric transmission line or oil or gas pipe line, water main, sanitary or storm sewer main, or for other special use. Right-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use.

<u>Standard street</u>: A standard street is a street or road that meets or exceeds the minimum specifications in the city's standard street specifications, and which is constructed to the ultimate configuration for the type of roadway it is designated for on the city's transportation plan.

<u>Substandard street</u>: An existing street or road that does not meet the minimum specifications in the city's standard street specifications, and which is not constructed to the ultimate configuration for the type of roadway it is designated for on the city's transportation plan.

<u>Street improvements</u>: This means any street or thoroughfare, together with all appurtenances required by city regulations to be provided with such street or thoroughfare, and including but not limited to curbs and gutters, walkways (sidewalks), parks pedestrian trails, drainage facilities to be situated in the right-of-way for such street or thoroughfare, traffic-control devices, streetlights and street signs, for which facilities the city will ultimately assume the responsibility for maintenance and operation.

Street length: This means the same as "block length".

<u>Subdivision</u>: A division or redivision of any tract of land situated within the city's city limits or its ETJ into two or more parts, lots, units, or sites, for the purpose, whether immediate or future, of sale, division of ownership, or building development. The term includes resubdivisions of land, lots, or units which are part of a previously recorded subdivision. A condominium development can be a subdivision. In other jurisdictions, the term may be referred to as an "addition."

<u>Submission date</u>: The submission date is when all necessary forms, fees, plans, information and copies have been submitted to the city, previewed for completeness, and deemed as "complete" by action of issuance of a certificate of completeness by the city.

<u>Substantial compliance</u>: An application is determined by the city administrator to be consistent with the preliminary plans or plat submitted to the city and approved by the city council when the application does not materially differ in, for example, the number of lots, the amount of impervious cover, the amount of parkland or open space, the number of streets, vehicular access, or water quality.

<u>Surveyor</u>: A licensed land surveyor or a registered public land surveyor, as authorized by state statutes to practice <u>Item 6.</u> profession of surveying.

SWPPP: A storm water pollution prevention plan (contained within the engineering construction plans).

TCEQ: Texas Commission on Environmental Quality, or a successor agency.

<u>Temporary improvements</u>: Improvements built and maintained by the property owner that are needed to remedy a circumstance that is temporary in nature, such as a temporary drainage easement or erosion control device, that will be removed upon completion of the subdivision or shortly thereafter.

<u>Uniform submittal date</u>: A date on the uniform submittal schedule adopted by the city on which administratively complete submissions for a plat become filed plat applications.

<u>Unit</u>: A physical portion of the condominium or apartment designated for separate ownership or occupancy, the boundaries of which are described by the condominium declaration or apartment plans.

<u>U.S. Army Corps of Engineers</u>: The civil engineering branch of the U.S. Government, or a successor agency.

<u>USFWS</u>: The United States Fish and Wildlife Service, or a successor agency.

Yard: The open area between building setback lines and lot lines.

SECTION 3. - PROCEDURES

3.1. - Pre-application procedures.

- **3.1.1.** Applicants shall avail themselves of the advice and assistance of the city's administrative officers, including its retained planning and engineering consultants (as applicable), and are required to participate in a pre-application conference before submitting a request for any type of plat as described below. Applicants are encouraged to consult early and informally with those officers and consultants before preparing any plat in order to save time and money, and to avoid potential unnecessary delays.
- **3.1.2.** All applicants shall schedule and attend a mandatory pre-application conference with the appropriate city official(s) in order to become familiar with the city's development regulations and the subdivision process. At the pre-application conference, the applicant may be represented by owner's land planner, engineer and/or surveyor. No development right (if any) shall vest upon participation in any pre-application conferences. Applicant shall inform the city at least five business days prior to any pre-application conference or other meeting if the applicant intends to bring a legal representative to a meeting.
- **3.1.3.** Prior to the pre-application conference, the applicant must provide a check payable to the city in the amount of the pre-application conference fee, as may be established by the city council.
- **3.1.4.** After a pre-application conference, the city shall issue a certification of completion of the pre-application conference that is valid for a period of 90 days. If a submission is not deemed a complete application within that time period, an additional pre-application conference will be required.
- **3.1.5.** An applicant or other interested individual may request a planning meeting that is an informal meeting related to land use questions. A planning meeting is a meeting with city staff that does not meet the pre-application conference requirement. No documentation or approvals may be given during a planning meeting.
- 3.2. Compliance with comprehensive plan, zoning, PDD, and development agreement.

Any plat submitted for approval by the city shall be in accordance with the city's zoning ordinance and comprehen plan, as may apply, including all adopted water, sewer, storm drainage, future land use, park, recreation, open space and transportation plans. All plats shall be prepared by a licensed civil engineer or a registered professional land surveyor. Any plat submitted for approval by the city shall be in accordance with any planned development district ordinance or development agreement.

3.3. - Classification of subdivisions.

Before any plat is filed for recordation with the county clerk, the property owner shall apply for and secure P&Z approval of the required subdivision plat, in accordance with the following procedures, unless otherwise provided within this chapter.

- **3.3.1.** Minor subdivisions may be approved for residential or nonresidential properties. Minor plat approval by the city administrator requires a pre-application conference and the submission of a final plat drawing and other submission materials required by this chapter. Lots or units may be conveyed or sold only when the plat has been approved by the city administrator and the plat has been filed at Hays County.
- **3.3.2.** Major subdivisions may be approved for residential or nonresidential properties. The procedure for approval of a major subdivision typically involves three steps: a pre-application conference, preliminary plat and final plat. Major plat approval shall be in accordance with this chapter. Upon completion and final acceptance of the required public improvements, or upon submission and city approval of the appropriate surety for public improvements, the property owner may submit the final plat for approval. All major subdivision plats must be reviewed and approved by the P&Z. Lots or units may be sold only when the final plat has been approved by the planning and zoning commission and the plat has been filed at Hays County. If the land is required to be platted, no conveyance or sale of any portion of the property, lot, or unit may occur until after the final plat is approved by the planning and zoning commission and filed at Hays County.

3.4. - Official filing date.

- **3.4.1.** For the purpose of these regulations, the "official filing date" shall be the date upon which a submission for approval of any type of plat, that contains all required elements mandated by the Local Government Code, section 212.004(b) and by this chapter, is deemed complete by the city administrator. To be considered complete, the submission must be accompanied by a check payable to the city in the amount of all applicable fees. It is only after the official filing date that any statutory period required for approval or disapproval of the plat shall commence to run. No application shall be deemed officially filed until the city administrator. Failure by the city administrator to make a determination of incompleteness within ten business days following the date on which the submission was first received by the city, shall result in the submission being deemed complete, the submission becoming an application on the next uniform submittal date.
- **3.4.2.** Plat submissions which do not include all required information and materials, as outlined below and per other city ordinances that may change from time to time, will be considered incomplete, shall not be accepted for official filing by the city, and shall not be scheduled on a P&Z agenda until the proper information is provided to city officials including the city's retained planning and engineering consultants, if applicable.
- 3.5. Submission timing.

A submission for completeness review of any plat shall be accepted at any time. Submissions that are deemed to a administratively complete shall be considered a filed application on the next uniform submittal date following the determination of administrative completeness.

3.6. - Notification.

- **3.6.1. Signage.** Within two business days after the city administrator issues a certificate of completeness for a plat application, the applicant shall place weather-resistant signs on the property under application for the purposes of public notification. The applicant shall submit a photo of the sign within two business days to the city administrator. The signs shall be provided by the city. Signs placed on the property involved must be within ten feet of any property line paralleling any established or proposed street, and must be visible from that street. All required signs shall remain on the property until final disposition of the plat application is determined. The applicant is responsible for removal of the signs within three business days after final disposition of the application.
- **3.6.2.** Website notice. Within two business days after the uniform submittal date after which the city administrator has issued a certificate of completeness for any plat application, the city shall place a notice of proposed plat on its website. The notice shall include the property description or address and the type of plat being considered.

3.7. - Submission materials.

- 3.7.1. The submission shall include the following:
 - (a) A complete application form that bears the original notarized signature(s) of the property owner(s) of the subject property;
 - (b) The prescribed submission fee;
 - (c) One half-sized 11-inch by 17-inch black-and-white reductions of the plat;
 - (d) One copy of any applicable development agreement pertaining to the subject property (if any);
 - (e) Copy of soil test turned into county;
 - (f) Digital copies of all submittal items including GIS data;
 - (g) A certificate or other satisfactory evidence from the Hays County Central Appraisal District showing that all taxes have been paid on the subject property, and that no delinquent taxes exist against the property. Documentation shall also be included that shows no delinquent assessments, fees, or other debts or obligations to the city and which are directly attributable to the subject property. One copy of the tax status certificate shall be submitted to the city in order for the application to be deemed complete;
 - (h) A preliminary drainage study;
 - (i) If any amount of surface water is to be used by the subject property, for final plat approval the applicant must certify to the city that the applicant has obtained all necessary authorizations from the Lower Colorado River Authority (LCRA) and the United States Fish and Wildlife Service (USFWS). The applicant must also provide proof of compliance with the memorandum of understanding (MOU) between LCRA and USFWS, or the regional water quality protection plan, as may be applicable;
 - (j) Record of approved variance needed for the project;
 - (k) Any waivers needed for the project;
 - (I) Any approved permits that are applicable to the plat application (i.e. driveway permit, TCEQ permit, utility provider permit, etc.);

- (m) A written narrative describing how all portions of the site development application meets all requireme *Item 6.* other codes including landscaping, lighting, parkland dedication, site development, water quality protection and may be relevant;
- (n) All documents in the correct form listed in section 4.8 of this ordinance; and
- (o) Any other reasonable and applicable information and materials deemed appropriate by the city engineer or city administrator.
- **3.7.2.** An engineer's summary report electronically and on paper that describes, in as much detail as necessary, the following:
 - (a) The overall nature and scope of the proposed development, including zoning (if applicable);
 - (b) The proposed use(s) and acreage of each proposed use (if applicable);
 - (c) Minimum lot or unit sizes, widths and depths, number of lots or units to be created;
 - (d) Special amenities or facilities that will be included in the development;
 - (e) How the property will be served with required utilities and services reflective of all letters of service availability;
 - (f) How stormwater drainage will be handled; and
 - (g) An itemization and description of any waivers from provisions of this chapter that will be sought.
- **3.7.3.** If the proposed development will have access points onto a major thoroughfare, the application shall also include a letter from the appropriate entity, such as TxDOT or Hays County, acknowledging and approving proposed driveway locations and corresponding median openings and left turn lanes, if applicable.
- **3.7.4.** Letters shall also be provided from each of the applicable utility service providers, including the city if applicable, including water, wastewater, gas, electricity, telephone, cable TV and solid waste, verifying their ability and willingness to provide an adequate level of service for the proposed development.
- **3.7.5.** The Dripping Springs Independent School District shall be notified (in writing, copy to city) so that the district has the opportunity to document any concerns regarding transportation issues or raise matters regarding efforts to obtain a future school site within any portion of the subject property.
- **3.7.6.** All plat drawings and other corresponding plans and drawings, including construction plans and landscape and screening plans, shall be on sheets equal to 24 inches by 36 inches in size, and shall be drawn to a known engineering scale of not smaller than 100 feet to the inch or a larger scale. In cases of large developments which would exceed the dimensions of the sheet at 100 foot scale, plats may be on multiple sheets or to another known engineering scale, as approved by the city administrator, and in a format that will be acceptable for eventual filing at Hays County.
- 3.8. City staff review prior to the planning and zoning commission meeting.

Upon official filing of a complete application for plat approval, as deemed complete by the city administrator, the city shall commence technical review of the development application by forwarding a copy of the application and plat to development review team members that may include, but shall not be limited to, the city administrator, city engineer, city attorney, city planner, and building official. City development review team members shall review the plat and shall ascertain its compliance with these and other applicable city regulations. For plats whose final reviewing authority is the planning and zoning commission, complete applications for the plat shall be placed on the agenda within 30 days of the date the city administrator determines that the plat submission is an administratively complete application and the application is filed on a uniform submittal date. The plat application the city has on file seven calendar days before the planning and zoning

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commission meeting, shall be the application that is submitted to the planning and zoning commission for review and *Item 6.* approval or disapproval. Amending and minor plats shall be reviewed and approved or disapproved administratively as described below.

3.9. - Extension request by applicant for planning and zoning commission.

Before or at the time of the planning and zoning commission meeting, if the final approval authority is the planning and zoning commission will accept and review a written request for an extension by the applicant. The planning and zoning commission may approve an extension on the request of the applicant for up to 30 days. If extended, the application will be placed on the next planning and zoning agenda within the extension period.

3.10. - Action by the P&Z.

- **3.10.1.** All subdivision plat applications (except minor plats and amended plats) shall be reviewed by the P&Z. If the application is in complete conformance with the provisions of this chapter, and with all other applicable regulations of the city, then the P&Z shall approve the application. The P&Z shall review each plat application and shall take action within 30 days (or during an approved extension period) of receipt of a completed application for a plat to:
 - (a) Approve the plat application;
 - (b) Approve the application subject to certain conditions; or
 - (c) Vote to disapprove the plat application.
- **3.10.2.** All plat applications that were disapproved by the Planning and Zoning Commission, shall be provided to the applicant with a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval.
- **3.10.3.** If the applicant amends its filed plat application in response to the planning and zoning commission's initial disapproval, the applicant may file its amended application at the city on a date or day on which the city is accepting amended filings. The city will then have up to 15 days to approve or disapprove the amending plat application. The Planning and zoning commission may either: (1) approve plat if the response adequately addresses each reason for the disapproval; or (2) disapprove plat if the response does not adequately address each reason for disapproval or creates new reasons for a violation of a statute or city ordinance. Any disapproval shall include a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval. Any plat that is disapproved after the city has reviewed the response in the form of an amended application may be refiled at any time as a new plat application.
- 3.11. Variances for plat applications.

For a plat application to be deemed complete, any variances needed for plat approval shall first be submitted through the variance process. If it is determined that a variance is needed after a plat application is filed, the plat may be: (1) approved without the variance if it is in complete compliance with all city regulations at the time of submittal; or (2) disapproved if a variance is needed in order for the plat application to comply with all city regulations.

3.12. - Proof of land ownership.

3.12.1. The city requires proof of land ownership prior to filing of any development application involving real property. Along with the submission, the applicant shall provide written verification, such as a notarized statement or a

power of attorney or other evidence satisfactory to the city administrator, that the applicant is the owner o *Item 6.* record of the subject land parcel or parcels, or is the property owner's authorized agent. The city administrator shall have the authority to determine what document(s) the city will require to prove ownership, such as one of the following:

- (a) General warranty deed;
- (b) Special warranty deed;
- (c) Title policy; or
- (d) Other documentation that is acceptable to the city administrator.
- **3.12.2.** If ownership cannot be conclusively established then the submission cannot be deemed administratively complete and cannot be filed as a land development application.
- **3.12.3.** One copy of the proof of land ownership document(s) shall be simultaneously submitted to the city in order for the application to be deemed complete.

3.13. - Lapse of plat approval.

The approval of any type of plat shall be effective for a period of 365 calendar days beyond the date that the plat was approved by the planning and zoning commission, except as otherwise provided herein. By 12:01 a.m. on the 366th day following planning and zoning commission approval of the plat, the applicant must have completed a city-required "progress benchmark" as set forth below. If this is not accomplished, then the approved plat shall be deemed to have expired and shall become null and void and a new plat application (along with all other required paperwork, plans, fees, etc.) must be submitted, reviewed and approved by the city in order to proceed with development of the property. The series of "progress benchmarks" for a project, pursuant to the provisions of this section, are as follows:

Approved Plat or Plan	Next "Progress Benchmark"
Preliminary Plat	All of the following shall occur within the 183 calendar days following preliminary plat approval: 1) city engineer's approval of construction plans for all proposed public improvements; and 2) payment of all applicable fees that are traditionally collected prior to release for site construction. In addition to the above, an application for approval of the final plat shall be submitted to the city within 365 calendar days following approval of the preliminary plat in order to avoid lapse of the approved preliminary plat (unless such is extended or reinstated pursuant to provisions in this chapter).

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Final Plat	Final plat approved by the planning and zoning commission but not yet file
	with Hays County — All materials necessary to file the plat at the county,
	including plat documents, filing fees, etc., shall be submitted to the city within
	30 calendar days of the date of final plat approval (the 30-day period shall
	commence upon county approval of final plat if the property is in the ETJ).
	<i>Final plat that has been filed at Hays County</i> — The final filed plat is valid in
	perpetuity, unless the filed plat is properly amended or vacated pursuant to the
	provisions of this chapter, or has not been filed with Hays County within one
	year of final approval by the city.

<u>Extension and reinstatement procedure</u>. Prior to the lapse of approval for a plat, the property owner may make application to the city to extend the plat approval. Such application shall be submitted at least ten business days prior to the expiration of the plat. The application for extension shall be considered by the city administrator, who shall approve or deny the application. If no application for extension of plat approval is submitted by the property owner in a timely fashion prior to the expiration date, then the plat shall be deemed to have expired and shall become null and void.

In considering whether to grant a request for extension, the city administrator shall take into account the reasons for lapse, the ability of the property owner to comply with any conditions attached to the original approval, and the extent to which newly adopted subdivision regulations would apply to the plat at that point in time. The city administrator shall either extend the plat (either with or without conditions) or shall deny the request, in which instance the originally approved plat shall be deemed to be null and void. The property owner must thereafter submit a new plat application for approval, and shall conform to the subdivision regulations then in effect.

The city administrator may extend the plat approval subject to additional conditions based upon newly enacted city regulations or state legislation, or such as are necessary to ensure compliance with the original conditions of approval or to protect the public health, safety and welfare. The city administrator may also specify a shorter time for extension of the plat than the original 365-day approval period.

3.14. - Lapse of construction plan approval.

The approved construction plans shall be valid for a period of 365 calendar days following approval by the city engineer. The city administrator may, upon written request by the applicant, grant an extension of up to an additional 365 calendar days, after which the construction plans shall be subject to reapproval by the city administrator in consultation with the city engineer if no substantial construction has been completed.

3.15. - Concept plan.

Submission of a concept plan is voluntary. Submission of a concept plan may be done at the pre-application conference. City review of a concept plan has many benefits for both the city and the applicant. The applicant benefits by obtaining preliminary review and scrutiny, as well as input and suggestions, on the overall conceptual layout of the proposed development from the city's development review team. The city benefits in that it is allowed to become familiar with and involved in the project early in the development process, which is particularly important for large-scale developments and

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subdivisions. This allows the city to plan for and closely coordinate the provision of public facilities and services, there *Item 6.* potentially avoiding future problems such as undersized utility lines, inadequate roadway capacities, unanticipated shortfalls in public services, and fiscal inefficiencies resulting from lack of planning and coordination.

3.15.1. Extent of area in a concept plan. When the overall development project is to be developed in phases, the concept plan area should include the entire property from which the phases are being subdivided and an approximate development schedule. Where significant natural or man-made features, such as thoroughfares or creeks, make inclusion of the entire property in the concept plan unnecessary to adequately review the items listed in the preceding paragraph, the concept plan may include a smaller study area. Boundaries such as major thoroughfares, whether existing or proposed, creeks and major drainageways, political subdivisions, or other such natural or man-made features may be used to delineate the smaller study area.

SECTION 4. - PRELIMINARY PLAT PROCEDURES

4.1. - Pre-application conference.

Following the pre-application conference regarding the overall general development strategy for the property, the applicant may submit a preliminary plat and other supplementary materials, as required by this chapter or by the city. The preliminary plat submission shall not be considered a filed application until the uniform submittal date after it has been deemed to be administratively complete by the city administrator.

4.2. - Portion.

The preliminary plat shall only be effective over that portion of the property or subdivision which the applicant proposes to construct and record provided such portion conforms to all the requirements of this chapter and with any other applicable regulations and codes of the city.

[4.3. - Reserved.]

4.4. - Approval of a preliminary plat.

Approval of a preliminary plat by the planning and zoning commission shall be deemed general approval of the street and lot or unit layout shown on the preliminary plat (approval for construction of the necessary streets, water lines, sewer lines, and other required improvements and utilities shall be authorized only through the city engineer's approval of the construction plans), and to the preparation of the final or record plat when construction of all required public improvements is nearing completion (or when appropriate surety for completion is provided to the city).

4.5. - Standards for approval.

No preliminary plat shall be approved by the P&Z unless the following standards have been met:

- **4.5.1.** The layouts for required public improvements and city utilities have been submitted by the applicant for approval by the city engineer (whether specifically stated or not, preliminary plat approval shall always be subject to any additions or alterations to the construction plans, if submitted as deemed necessary by the city engineer, as needed, to ensure the safe, efficient and proper construction of public improvements within the subdivision); and
- **4.5.2.** The plat conforms to applicable zoning and other city regulations.

4.6. - Non-permitted construction work.

- **4.6.1.** No construction work shall begin on the proposed improvements in the proposed subdivision prior to approval of the preliminary plat and construction plans by the planning and zoning commission or appropriate approval authority, nor prior to issuance of all appropriate construction permits by the city and other appropriate entities or agencies.
- **4.6.2.** This prohibition does not apply to the clearing of cedar trees with the use of rubber-tired equipment.
- **4.6.3.** Any clear-cutting or tree removal must be performed in compliance with the city's landscape regulations, as may be applicable.
- **4.6.4.** No excavation, grading, tree removal or site clearing activities shall occur prior to approval of the preliminary plat and the construction plans. However, preliminary grading or site preparation activities, such as limited excavation, filling, and removal or clearing of brush, undergrowth or man-induced debris, may be authorized by the city administrator, at the administrator's discretion, if such request is submitted in writing by the property owner or developer, if such activities are in conformance with all applicable city ordinances and codes, and if such activities will not be detrimental to the public health, safety or general welfare.

4.7. - Information required.

The proposed preliminary plat and associated preliminary construction plans shall show the following information:

- (a) A vicinity, or location, map that shows the location of the proposed preliminary plat within the city (or within its ETJ) and in relationship to existing roadways;
- (b) Boundary lines, abstract/survey lines, corporate and other jurisdictional boundaries, existing or proposed highways and streets (including right-of-way widths), bearings and distances sufficient to locate the exact area proposed for the subdivision, and all survey monuments including any required concrete monuments (per the city engineer); the length and bearing of all straight lines, radii, arc lengths, tangent lengths and central angles of all curves shall be indicated along the lines of each lot or unit (curve and line data may be placed in a table format); accurate reference ties via courses and distances to at least one recognized abstract or survey corner or existing subdivision corner shall be shown;
- (c) The name, location and recording information of all adjacent subdivisions (or property owners of adjacent unplatted property), including those located on the other sides of roads or creeks, shall be drawn to the same scale and shown in dotted lines adjacent to the tract proposed for subdivision in sufficient detail to show accurately the existing streets, alleys, building setbacks, lot and block numbering, easements, and other features that may influence the layout of development of the proposed subdivision; adjacent unplatted land shall show property lines, the names of owners of record, and the recording information;
- (d) The location, widths and names of all streets, alleys and easements (it shall be the applicant's responsibility to coordinate with appropriate utility entities for placement of necessary utility easements and for location of all streets and median openings on highways or arterial roadways), existing or proposed, within the subdivision limits and adjacent to the subdivision; a list of proposed street names shall be submitted (in the form of a letter or memo along with the application form) for all new street names (street name approval is required at the time the preliminary plat is approved);
- (e) The location of all existing property lines, existing lot and block numbers and date recorded, easements of record (with recording information), buildings, existing sewer or water mains (can be shown on a separate sheet, if preferred), gas mains or other underground structures, or other existing features within the area proposed for subdivision;

- (f) Proposed arrangement and square footage of lots or units (including lot, unit numbers, or block numbers, or block
- (g) A title block within the plat (and construction plans) which shows the title or name under which the proposed subdivision is to be recorded; the name, address and phone number of the property owner(s); the name, address and phone number of the licensed engineer or registered professional land surveyor who prepared the plat/plans; the scale of the plat/plans; the date the plat/plan was prepared; and the location of the property according to the abstract or survey records of Hays County, Texas; the subdivision name shall not duplicate (or too closely phonetically replicate) the name of any other platted subdivision in Dripping Springs, its ETJ, or other surrounding communities in Hays County, but phasing identification is allowed to be similar to previous phases of that particular development (it is the property owner's responsibility to check the plat records of Hays County to ensure that the proposed subdivision name will not duplicate or sound too much like a subdivision name already in existence the city may, at its discretion, require a different subdivision name if there is potential for confusion by public safety officials or the general public);
- (h) Sites, if any, to be reserved or dedicated for parks, schools, playgrounds, other public uses or for private facilities or amenities;
- (i) Scale (including a graphic scale), date, north arrow oriented to the top or left side of the sheet, and other pertinent informational data;
- (j) Contours with intervals of two feet or less shown for the area, with all elevations on the contour map referenced to sea level datum; and the limits of any portion of the 100-year floodplain (pursuant to the flood study, if required by the city engineer) that may be within or adjacent to (i.e., within 100 feet of) the property (final monumentation of the floodplain shall occur, and shall be shown, on the final plat prior to approval and filing at the county) — if no floodplain is present, then a note stating this shall be shown on the plat;
- (k) Areas contributing drainage to the proposed subdivision shall be shown in the construction plans; locations proposed for drainage discharge from the site shall be shown by directional arrows;
- (I) All physical features of the property to be subdivided shall be shown, including:
 - (1) The location and size of all watercourses;
 - (2) 100-year floodplain according to Federal Emergency Management Agency (FEMA) information;
 - (3) U.S. Army Corps of Engineers flowage easement requirements;
 - (4) All critical environmental features (CEFs) such as karsts, springs, sinkholes, caves, etc., to be located and documentation to be signed and certified by a geologist. All CEF to have a minimum setback of 150 feet. All designated wetlands to be certified as such by an accredited wetland biologist relying of [on] the presence of wetlands plant species. Applicant to include a slope map identifying the breakdown of all lands in categories from zero percent to 15 slope, 15 to 30 slope, and over 30 percent slope;
 - (5) Ravines;
 - (6) Bridges;
 - (7) Culverts;
 - (8) Existing structures;
 - (9) Drainage area in acres or area draining into subdivisions (only in the construction plans); and
 - (10) Outline of major wooded areas or the location of major or important individual trees (excluding cedar

trees) with trunk diameters exceeding 12 inches measured four feet above the ground, and other features pertinent to subdivision; is defined in the city's technical construction standards and specifications, and the city's landscape ordinance;

- (m) Schematic engineering plans of water and sewer lines and other infrastructure (including sizes) to be constructed in the subdivision; the proposed connections to distribution mains shall be indicated;
- (n) Proposed phasing of the development: Where a subdivision is proposed to occur in phases, the applicant, in conjunction with submission of the preliminary plat, shall provide a schedule of development, the dedication of rights-of-way for streets and street improvements, whether on-site or off-site, intended to serve each proposed phase of the subdivision. The city engineer shall determine whether the proposed streets and street improvements are adequate pursuant to standards herein established, and may require that a traffic impact analysis be submitted for the entire project or for such phases as the city engineer determines to be necessary to adjudge whether the subdivision will be served by adequate streets and thoroughfares;
- (o) All preliminary plats shall be submitted in a legible format that complies with Hays County requirements for the filing of plats;
- (p) Existing zoning of the subject property and all adjacent properties if within the city limits;
- (q) Construction traffic plan showing proposed routes for construction vehicle traffic and points of ingress and egress of such vehicles during construction; temporary construction easement approvals if needed, this shall be sealed by a registered engineer;
- (r) Certificates and other language shall be included on the plat, pursuant to the following subsections:
 - (1) A statement signed by the property owner(s) and acknowledged before a notary public that the subdivided area is legally owned by the applicant;
 - (2) An accurate legal, such as by metes and bounds, description by bearings and distances (including necessary curve and line data), accurate to the nearest 100th of a foot, for all boundary, block and lot lines, with descriptions correlated to a permanent survey monument;
 - (3) The registered professional land surveyor's certificate, with a place for his or her signature and notarization of his or her signature;
 - (4) A place for plat approval signature of the chair (or vice chair, in the chair's absence) of the planning and zoning commission, a place for the city secretary to attest such signature, and the approval dates by the planning and zoning commission;
 - (5) Appendices to this chapter contain certificates and languages to be used on the plat to accommodate the above requirements;
- (s) Target consumer groups for the project;
- (t) If any amount of surface water is to be used by the subject property, the applicant must provide documentation to the city establishing that the applicant has notified the following entities of the applicant's plans for the project: Lower Colorado River Authority (LCRA), and the United States Fish and Wildlife Service (USFWS); and
- (u) If any amount of groundwater is to be used by the subject property, the applicant must provide documentation to the city establishing that the applicant has notified the following entities of the applicant's plans for the project: Barton Springs Edwards Aquifer Conservation District, and the Hays-Trinity Groundwater Conservation District.



After approval of a preliminary plat, the applicant shall submit the required number of sets of the complete construplans for all streets, alleys (if any), storm sewers and drainage structures, water and sanitary sewer facilities, screening and retaining walls, landscaping and irrigation, and any other required public improvements for the area covered by the approved preliminary plat. The construction plans shall also contain any plans deemed necessary to show or document compliance with the city's ordinances pertaining to nonpoint source pollution control, and any other applicable codes and ordinances of the city that are related to development of a land parcel. Cost estimates for the completion of all public improvements shall also be submitted with the construction plans for review (and approval, if necessary) by the city engineer.

- **4.8.1.** For the purposes of this chapter, complete sets of construction plans shall include the following plans or sheets (generally in this order), as well as any additional plans or sheets deemed necessary and requested by the city engineer:
 - (a) Cover or title sheet (with list of all plans).
 - (b) Preliminary plat.
 - (c) Existing conditions plan (unless these items are shown on the Preliminary Plat itself), which shows existing topography, vegetation, tree inventory of those trees with a diameter of eight inches or greater (when measured four feet above the natural grade) located within 20 feet of intended rights-of-way (streets and utilities), existing natural and man-made physical features, etc.
 - (d) Existing tree and vegetation protection plan.
 - (e) Grading, erosion control, and water quality control plans (including a SWPPP).
 - (f) Paving and storm drainage plans.
 - (g) Utility plans for water, sanitary sewer, etc.
 - (h) Traffic-control plans (if necessary).
 - (i) Screening and retaining wall plans.
 - (j) Landscaping and irrigation plans.
- **4.8.2.** The applicant shall have these plans prepared by their own professional engineer(s), subject to approval of the plans by the city engineer. The city engineer shall review, or cause to be reviewed, the plans and specifications and if approved, shall mark them "approved" and shall return one set to the applicant, and at least two sets shall be retained in the city's files. If not approved, then one set shall be marked with the objections noted (on the plans themselves and/or in memo format, a copy of which shall also be sent to the city) and returned to the applicant for correction, whereupon the applicant's engineer shall correct the plans as requested and shall resubmit them back to the city engineer for re-review. Once the construction plans are approved by the city engineer (as documented by an approval letter addressed to the applicant and copied to the city), the property owner shall provide additional sets of the approved plans to the city, as specified by the city engineer, for use during construction. A full set of the city-approved and stamped construction plans must be available for inspection on the job site at all times.
- **4.8.3.** After approval of the preliminary plat by the planning and zoning commission, approval of the construction plans and specifications by the city engineer, and following procurement of all applicable permits from other appropriate agencies (such as TxDOT, TCEQ, U.S. Army Corps of Engineers, FEMA, and/or Hays County), USFWS, the applicant shall cause a contractor(s) to install or construct the public improvements in accordance with the approved plans and the city's standard specifications, and at the applicant's expense. The applicant shall employ engineers, surveyors or other professionals as necessary to design, stake,

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supervise, perform and complete the construction of such improvements, and shall cause his or her contractor to construct the said improvements in accordance with this chapter and with the city's, and any other applicable agencies, design standards. If the project will require a FEMA map revision, then the proposed plans shall also be reviewed for compliance with the city's flood damage prevention ordinance, as amended, prior to approval of the preliminary plat and prior to any construction activities (including but not limited to grading, clearing, grubbing, brush removal, etc.) on the site.

- **4.8.4.** Construction plans shall be prepared by or under the direct supervision of a professional engineer licensed in the State of Texas, as required by state law governing such professions and in accordance with this chapter and the city's ordinances. All construction plans submitted for city review shall be dated and shall bear the responsible engineer's registration number, and the designation of "professional engineer" or "P.E.," and the engineer's seal. Construction plans shall be approved by the city engineer only when such plans meet all of the requirements of this chapter and the ordinances.
- **4.8.5.** Construction plans shall be in conformance with the ordinances and with the requirements set forth herein. Construction plans (in complete sets, as described above) showing paving and design details of streets, alleys, culverts, bridges, storm sewers, water mains, sanitary sewers, sidewalks, screening and retaining walls, landscape and irrigation plans (if appropriate), and other engineering details of the proposed subdivision at a scale of one inch equals 20 or 40 feet horizontally and one inch equals two, five, or ten feet vertically shall be submitted to the city engineer along with a copy of the preliminary plat of the subdivision. The number of copies as specified by the city shall be submitted along with the preliminary plat submittal.
- **4.8.6.** A landscape architect may prepare the landscaping and irrigation plans.
- **4.8.7.** As part of the construction plans, a drainage plan showing how the drainage of each lot relates to the overall drainage plan for the plat under consideration shall be submitted. The drainage plan shall be made available to each builder within the proposed subdivision and all builders shall comply with the drainage plan.
- 4.9. Effect of approval.

Approval of a preliminary plat authorizes the property owner, upon fulfillment of all requirements and conditions of approval and upon construction of all required improvements (or submission of the proper assurances for construction of same), to submit for final plat approval. All public improvements required by this ordinance shall be completed or supported by complete fiscal security in accordance with approved construction plans prior to submission for final plat approval. A final plat shall not be filed until all improvements and/or fiscal security has been accepted.

4.10. - Revisions to approved preliminary plat.

It is generally recognized that revisions to the preliminary plat may be needed before the final plat application can be filed with the city.

- (a) <u>Preliminary plat revision procedure.</u> To request a revision to an approved preliminary plat, the applicant must file an application with the City.
 - (1) <u>Minor revisions.</u> An application shall include the signatures of all lot owners directly affected by the revision. Applications for minor revisions shall be reviewed by the development review committee.
 - (2) <u>Major revisions.</u> A new application for a preliminary plat is required including signatures of all lot owners affected by the revision, compliance with amendments to this chapter which occurred since original preliminary plat approval, and other requirements. Major revisions shall require notification to all lot

owners within the approved preliminary plat by mail at least 15 days prior to the planning and zoni *Item 6.* commission meeting at which the revision will be considered.

- (b) <u>Minor revisions.</u> Minor revisions are slight enlargement or shifting of easements or lot lines, unit lines, addition of private or franchise utility easements, correction of bearings or distances, correction of minor labeling errors, addition of erroneously omitted informational items and labels, etc. Minor revisions also can include an increase in density by no more than ten percent so long as the increase is allowed under all city ordinances and agreements with the city. Minor revisions also cannot negatively impact the provision of public facilities. Determination of whether or not revisions are "minor" in nature is subject to the judgment of the city administrator in consultation with the development review committee.
- (c) <u>Major revisions.</u> Major revisions include obvious reconfiguration of easements, relocation of interior road connections to exterior roadways or access easements or fire lanes, any modification to the perimeter or boundary of the property, increase in density not considered a minor revision, decrease in parkland or open space, and relocation or addition or deletion of any public improvement (including corresponding easement) or any other change to a preliminary plat that is not a minor revision.

(<u>Ord. No. 2021-02</u>, § 2, 1-12-2021)

SECTION 5. - FINAL PLAT APPROVAL PROCEDURES

5.1. - Substantial compliance with preliminary plat.

The final plat shall be in accordance with the preliminary plat or revised preliminary plat, as approved, and shall incorporate all applicable conditions, changes, directions and additions imposed by the P&Z upon the preliminary plat. The final plat shall not be submitted prior to approval of the preliminary plat except as otherwise specifically allowed by this ordinance. The final plat shall be approved by the P&Z in accordance with this subdivision ordinance if it is in compliance with the preliminary plat and all city and other regulations.

5.2. - Incomplete.

Final plat applications which do not include the required data, completed application form, submission fee, number of copies of the plat, record drawings, "letter of satisfactory completion" (of the public improvements) from the city, and other required information, including documentation that all required public improvements have been constructed and installed in accordance with city standards, letters from utility companies verifying their easements, and submission of the proper assurances or escrow funds for the completion of the improvements will be considered incomplete, shall not be accepted for filing by the city, and shall not be considered by the P&Z agenda until the proper information is provided to city staff.

5.3. - Information for final plat.

- 5.3.1. All information that is required for a preliminary plat; and except that physical features of or on the land (such as topography, buildings, utility structures, water bodies and tree cover) shall be shown on the final plat. In addition to these items, the final plat shall also provide a place for the county clerk of Hays County to stamp the date and location where the plat will be filed ("Volume or Cabinet ____, Page or Slide ____") in the lower right-hand corner of all sheets of the plat drawing near the title block.
- **5.3.2.** All aspects of the final plat shall conform to the standards of Hays County for plats with respect to clarity, sheet size, lettering size and reproducibility, and the county's formatting requirements for same shall control if

5.4. - Standards for approval.

No final plat shall be approved by the city administrator or the P&Z and the city council unless the following standards have been met:

- **5.4.1.** Notice for the final plat was provided in accordance with the notice requirements in section 3.6 of this ordinance;
- 5.4.2. The plat substantially complies with the approved preliminary plat and other studies and plans, as applicable;
- **5.4.3.** The construction and installation of required public improvements and city utilities has been completed and the improvements have been accepted by the city as conforming to the city's regulations and design standards (or the proper assurances for construction of the improvements have been submitted and approved by the city); and
- **5.4.4.** The plat conforms to applicable zoning, subdivision and any other applicable codes or ordinances of the city that are related to development of a land parcel.

5.5. - Letter of compliance.

When all of the improvements are found to be constructed and completed in accordance with the approved plans and specifications and with the city's standards, and upon receipt by the City of Dripping Springs of a maintenance bond or certificate of deposit from each contractor (for those subdivisions in the city limits), one sealed set of "as-built" or "record drawing" plans and a digital copy of all plans (in a format as determined by the city engineer) shall be submitted with a letter stating the contractors' compliance with this chapter, and bearing sealed certification by the design engineer that all public improvements have been constructed in compliance with all city construction standards set forth in the ordinances and other applicable city design documents. After such letter and certification is received, the city council shall receive and accept for the City of Dripping Springs the title, use and maintenance of the improvements. The final plat shall not be approved or filed at the county prior to receipt of the above letter and certification and any other required items, nor prior to acceptance of the improvements by the city.

5.6. - Effect of approval.

Approval of a final plat authorizes the property owner, upon fulfillment of all requirements and conditions of approval and upon completion of construction of all required improvements (or submission of the proper assurances for construction of same), to submit the final copies of the plat for filing at Hays County. Lots or units may be sold only when the final plat has been approved by the planning and zoning commission and the plat has been filed at Hays County. No conveyance or sale of any portion or lot of the property may occur until after the final plat is approved by the planning and zoning commission and filed at Hays County.

5.7. - Revisions to final plat prior to filing.

Occasionally, minor revisions are needed before the final plat can be filed at the county. Such minor revisions as correction of bearings or distances, correction of minor labeling errors, addition of erroneously omitted informational items and labels, etc. may occur on the record plat prior to filing it without the planning and zoning having to reapprove the final plat. Determination of whether or not revisions are "minor" in nature is subject to the judgment of the city. Major revisions, such as obvious corrections or reconfiguration of lot lines, unit boundaries or easements, relocation of driveways or acc

easements or fire lanes, any modification to the perimeter or boundary of the property, and relocation or addition or deletion of any public improvement (including corresponding easement), shall necessitate resubmission and reapproval of the plat as a "revised final plat" unless otherwise approved by the city. The procedures for such reapproval shall be the same as for a final plat, and such reapproval may constitute a new project thus necessitating submission of a new application form, payment of new fees, compliance with amendments to this chapter which occurred since original final plat approval, and other requirements.

5.8. - Returns to city.

After approval of the final plat, the applicant shall return copies of the final plat, as approved and recorded, along with any other required documents and necessary fees, to the city administrator within 30 calendar days following approval, in accordance with requirements established by the city. Applicant can apply to the city administrator for an extension for the time of recording the final plat. If the plat is not recorded within the time required in this section or as provided by an extension, the final plat shall expire.

SECTION 6. - CONSTRUCTION PLAN APPROVAL PROCEDURES

6.1. - Substantial compliance with preliminary plat.

The construction plan shall be in accordance with the preliminary plat as approved, and shall incorporate all applicable conditions, changes, directions and additions imposed by the P&Z upon the preliminary plat. The construction plan shall not be submitted prior to approval of the preliminary plat. The construction plan shall be approved:

- **6.1.1.** By the city administrator if the city administrator finds the construction plan substantially complies with the preliminary plat approved by the planning and zoning commission; or
- **6.1.2.** By the P&Z in accordance with this subdivision ordinance if the city administrator finds the construction plan does not substantially comply with the preliminary plat.

6.2. - Incomplete.

Construction plan applications submissions which do not include the required data, completed application form, submission fee, number of copies, record drawings, "letter of satisfactory completion" (of the public improvements) from the city, and other required information, including documentation that all required public improvements have been constructed and installed in accordance with city standards, letters from utility companies verifying their easements, and submission of the proper assurances or escrow funds for the completion of the improvements will be considered incomplete, shall not be accepted for submission by the city, and shall not be considered filed by the city for review by the city administrator or for scheduling on a P&Z agenda until the proper information is provided to city staff.

6.3. - Standards for approval.

No construction plan shall be approved by the city administrator or the P&Z unless the following standards have been met:

- **6.3.1.** The plan substantially complies with the approved preliminary plat and other studies and plans, as applicable;
- **6.3.2.** The plan conforms to applicable zoning, subdivision and any other applicable codes or ordinances of the city that are related to development of a land parcel.

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SECTION 7. - REPLATTING

Footnotes:

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State Law reference— Replatting without vacating preceding plat, V.T.C.A., Local Government Code, § 212.014; additional requirements for certain replats, V.T.C.A., Local Government Code, § 212.015.

7.1. - Replat required.

Unless otherwise expressly provided for herein, a property owner who proposes to replat any portion of an already approved and filed final plat, other than to amend or vacate the plat, must first obtain approval for the replat under the same standards and by the same procedures prescribed for the final platting of land by this chapter. All improvements shall be constructed in accordance with the same requirements as for a final plat, as provided herein. The city administrator may waive or modify requirements for a replat under certain circumstances where the proposed replat does not involve a large land parcel or an existing structure or business on the subject property, and where the proposed plat revisions are relatively simple in nature. The administrative completeness of a submission for a replat shall be done pursuant to the process in section 3.4.1.

7.2. - Replatting without vacating.

A replat of a final plat or portion of a final plat may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- **7.2.1.** Is signed and acknowledged by only the owners of the property being replatted.
- **7.2.2.** Is approved, after a public hearing on the matter at which parties of interest and citizens have an opportunity to be heard, by the P&Z.
- **7.2.3.** Does not attempt to amend or remove any covenants or restrictions previously incorporated in the final plat. For purposes of this section, a plat note shall be construed as a covenant or restriction.
- **7.2.4.** When evaluating the size of lots requested by an applicant seeking to replat all or a portion of a single-family residential subdivision without vacation, the city's determination shall include consideration of:
 - (a) The minimum lot area required for the particular zoning district;
 - (b) Minimum lot sizes established by deed restrictions (aka, "restrictive covenants") in effect for the subdivision;
 - (c) The average size of existing platted lots or units in the subdivision; and
 - (d) The size of the smallest developable (i.e., "buildable") lot or unit in the subdivision.
- **7.2.5.** If a replat requires a variance then the variance must be approved by the planning and zoning commission prior to submission of the filing of the application for the replat. Any waiver requests may be considered concurrently with the replat application.

7.2.6.

- (a) In addition to compliance with the other requirements of this section, a replat without vacation of the preceding plat must conform to the requirements of this subsection if:
 - During the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot;

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- (2) Any lot in the preceding plat was limited by deed restrictions to residential use for not more tha *Item 6.* residential units per lot.
- (b) If a replat under subsection (a) requires a variance a notice of the hearing shall be given before the 15th day before the date of the hearing by:
 - (1) Publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
 - (2) By written notice, with a copy of subsection (c) attached, forwarded by the city to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved county tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.
 - (3) The notice of a replat approval required by this subsection must include: (A) the zoning designation of the property after the replat; and (B) a telephone number and e-mail address an owner of a lot may use to contact the city about the replat.
- 7.2.8. If a proposed replat described under this section does not require a variance, the city shall, not later than the 15th day before the date the replat is to be considered by the planning and zoning commission, provide written notice by mail of the consideration of the replat to each owner of a lot in the original subdivision to be replatted according to the most recent county tax roll.

Notice of the public hearing required under subsection 7.2.6(b) above shall be given no earlier than the 30th day nor less than the 15th calendar day before the date of the hearing by publication in the city's official newspaper. Notice of the public hearing shall also be given by written notice no earlier than the 30th day nor less than the 15th calendar day before the date of the hearing, with a copy or description of any requested waivers, sent to the property owners, as documented on the most recently approved ad valorem tax roll of the city, of lots that are in the original subdivision and that are within 300 feet of the lot(s) to be replatted. In the case of a subdivision in the ETJ, the most recently approved county tax roll shall be used. The written notice may be delivered by depositing the notice, properly addressed with appropriate postage paid, in a post office or postal depository within the boundaries of the city.

7.3. - Reference to previous subdivision.

Any replat which adds or deletes lots or units must include the original subdivision and lot boundaries. If a replat is submitted for only a portion of a previously platted subdivision, the replat must reference the previous subdivision name and recording information, and must state on the replat the specific lots which have changed along with a detailed "purpose for replat" statement.

7.4. - Vacated plat.

If the previous plat is vacated as prescribed in section 212.013 of the Texas Local Government Code, as amended, a public hearing is not required for a replat of the area vacated. It would, instead, be submitted as a "final plat" and reviewed accordingly, and signed by all owners of the existing subdivision.

7.5. - Other requirements.



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The replat of the subdivision shall meet all the requirements under current regulations for a final plat for a new subdivision that may be pertinent, as provided for herein.

7.6. - Submittal.

A submission for a replat shall be the same as for a final plat, and shall be accompanied one copy of the plat, a completed application form, the required submission fee, and a certificate showing that all taxes have been paid on the subject property and that no delinquent taxes exist against the property, and all other documentation needed for a final plat. The replat shall also bear a detailed "purpose for replat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and filed at the county.

7.7. - Materials.

A copy of all application materials for a replat shall be submitted to the city for review in the same manner as for a final plat, or the application shall be deemed incomplete.

[7.8. - Reserved.]

7.9. - Filing with county.

The replat shall be filed at the county in the same manner as prescribed for a final plat, and approval of a replat shall expire if all filing materials are not submitted to the city secretary, and if the replat is not filed at the county within the time periods specified for a final plat.

SECTION 8. - AMENDED PLATS

8.1. - Requirements.

- 8.1.1. An amending plat shall meet all of the informational requirements set forth for a final plat, and shall be accompanied by the copy of the plat, a completed application form, the required submission fee, and a certificate or some other acceptable form of verification from the Hays County Central Appraisal District showing that all taxes have been paid on the subject property and that no delinquent taxes exist against the property.
- **8.1.2.** For the purpose of these regulations, the "official filing date" shall be the date upon which a submission for approval of an amending plat, that contains all required elements mandated by the Local Government Code and by this chapter, is deemed complete by the city administrator. To be considered complete, the submission must be accompanied by a check payable to the city in the amount of all applicable fees. It is only after the official filing date that any statutory period required for approval or disapproval of the plat shall commence to run. No application shall be deemed officially filed until the city administrator. Failure by the city administrator to make a determination of incompleteness within ten business days following the date on which the submission was first received by the city, shall result in the submission being deemed complete on the next uniform submittal date, the submission becoming an application, and the "official filing date" shall become the next uniform submittal date following initial receipt of the application by the city.

8.1.3. Official filing date.

8.1.3.1. For the purpose of these regulations, the "official filing date" shall be the date upon which a complete

submission for approval of an amending plat, that contains all required elements mandated by the Loc Government Code and by this chapter, is deemed complete by the city administrator. To be considered complete, the submission must be rendered to the city within the timelines established by this chapter and accompanied by a check payable to the city in the amount of all applicable fees. It is only after the official filing date that any statutory period required for approval or disapproval of the plat shall commence to run. No application shall be deemed officially filed until the city administrator determines that the submission is complete and a certificate of completeness is issued by the city administrator. Failure by the city administrator to make a determination of incompleteness within ten business days following the date on which the submission was first received by the city, shall result in the submission being deemed complete, the submission becoming an application, and the "official filing date" shall become the next uniform submittal date.

8.1.3.2. Plat applications submissions which do not include all required information and materials, as outlined below and per other city ordinances that may change from time to time, will be considered incomplete, shall not be accepted for official submission by the city, and shall not be reviewed by the city administrator until the proper information is provided to city officials including the city's retained planning and engineering consultants, if applicable.

8.2. - Materials.

A copy of all application materials for an amending plat shall be submitted to the city for review in the same manner as for a final plat, or the application shall be deemed incomplete.

8.3. - Administrative approval.

- **8.3.1.** Upon review and a finding that the amending plat is in full conformance with this and all other applicable city ordinances, the city administrator may approve, disapprove, or approve with conditions the amending plat. The amending plat may be recorded and is controlling over the preceding or final plat without vacation of that plat, if the amending plat is signed by the applicants only and if the amending plat is for one or more of the purposes set forth in this section. The procedures for amending a plat shall apply only if the sole purpose of the amending plat is to:
 - (a) Correct an error in a course or distance shown on the preceding plat;
 - (b) Add a course or distance that was omitted on the preceding plat;
 - (c) Correct an error in a real property description shown on the preceding plat;
 - (d) Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
 - (e) Show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
 - (f) Correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
 - (g) Correct an error in courses and distances of lot lines between two adjacent lots if:
 - (1) Both lot or unit owners join in the application for amending the plat;
 - (2) Neither lot or unit is abolished;
 - (3) The amendment does not attempt to remove or modify recorded covenants or restrictions or easeme

and

- (4) The amendment does not have a material adverse effect on the property rights of the owners in the plat;
- (h) Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or unit boundary or easement;
- (i) Relocate one or more lot lines or unit boundaries between one or more adjacent lots or units if:
 - (1) The owners of all those lots or units join in the application for amending the plat;
 - (2) The amendment does not attempt to remove or modify recorded covenants or restrictions or easements; and
 - (3) The amendment does not increase the number of lots or units.
- **8.3.2.** All amending plat applications that were disapproved by the city administrator, shall be provided to the applicant with a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval.
- **8.3.3.** If the applicant amends its filed plat application in response to the city administrator's initial disapproval, the applicant may file its amended application at the city on a date or day on which the city is accepting amended filings. The city will then have up to 15 days to approve or disapprove the amending plat application. The city administrator may either: (1) approve plat if the response adequately addresses each reason for the disapproval; or (2) disapprove plat if the response does not adequately address each reason for disapproval or creates new reasons for a violation of a statute or city ordinance. Any disapproval shall include a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval. Any plat that is disapproved after the city has reviewed the response in the form of an amended application may be refiled at any time as a new plat application.

8.4. - Title.

The amending plat shall be entitled and clearly state that it is an "amending plat", and it shall include a detailed "purpose for amending plat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and filed at the county. It shall also state the specific lots or units affected or changed as a result of the amending plat, and shall include the original subdivision plat boundary. All references to "final plat" or "replat" shall be removed.

8.5. - Process.

Other than noted above, the procedure for approval of plat amendment(s) shall be the same as for final plats.

8.6. - Filing with county.

The amending plat shall be filed at the county in the same manner as prescribed for a final plat, and approval of an amending plat shall expire if all filing materials are not submitted to the city secretary, and if the plat is not filed at the county within the time periods specified for a final plat.

SECTION 9. - PLAT VACATION

The property owner of the tract covered by a plat may vacate, upon review by the P&Z and approval by the planning commission, the plat at any time before any lot or unit in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat (instrument language is available from the city, upon request).

9.2. - By all lot or unit owners.

If some or all of the lots or unit covered by the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots or units in the plat with approval obtained in the manner prescribed for the original plat.

9.3. - Criteria.

The P&Z shall review the application for vacation on such terms and conditions as are in accordance with section 212.013 of the Texas Local Government Code (as amended), and as are reasonable to protect the public health, safety and welfare. As a condition of vacation of the plat, the P&Z may direct the applicants to prepare and seek approval of a revised final plat in accordance with this chapter such that the property does not become "unplatted".

9.4. - Effect of action.

On the execution and recording of the vacating instrument, the plat that has been vacated as a result of this instrument shall have no effect. Regardless of the P&Z's and city council's action on the application, the property owner will have no right to a refund of any monies, fees or charges paid to the city nor to the return of any property or consideration dedicated or delivered to the city except as may have previously been agreed to by the P&Z.

9.5. - City-initiated plat vacation.

- **9.5.1.** General conditions. The planning and zoning commission, on its motion and following a public hearing on the matter, may vacate the plat of an approved subdivision or addition when:
 - (a) No lots or units within the approved plat have been sold within five years following the date that the plat was signed by the city; or
 - (b) The property owner has breached an improvement agreement and the city is unable or does not desire to obtain funds with which to complete construction of public improvements, except that the vacation shall apply only to lots owned by property owner or its successor; or
 - (c) The plat has been of record for more than five years and the city determines that the further sale of lots or units within the subdivision or addition presents a threat to public health, safety or welfare, except that the vacation shall apply only to lots or units owned by the property owner or its successors.
- **9.5.2. Procedure.** Upon any motion of the P&Z or city council to vacate the plat of any previously approved subdivision or addition, in whole or in part, the city shall publish notice in the city's official newspaper no sooner than the 30th day nor later than the 15th day prior to the date of the public hearing at which the plat vacation shall be heard by the P&Z. The city shall also provide written notice to all property owners within the subdivision or addition, and to all members of the planning and zoning commission. The notice shall state the time and place for a public hearing before the P&Z on the motion to vacate the subdivision or addition plat. The P&Z shall approve the plat vacation only if the criteria and conditions cited above are satisfied.
- 9.5.3. Record of notice. If the planning and zoning commission approves vacating a plat, the city secretary shall rec

a copy of the plat vacation instrument in the office of the county clerk of Hays County along with an exhibit *Item 6.* showing a drawing of the area or plat vacated. The county clerk shall write legibly on the vacated plat the word "vacated" and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded. If the planning and zoning commission vacates only a portion of a plat, it shall cause a revised final plat drawing to also be recorded which shows that portion of the original plat that has been vacated and that portion that has not been vacated. On the execution and recording of the vacating instrument the plat that has been vacated as a result of this instrument (or the vacated portion of the plat) has no effect.

SECTION 10. - MINOR PLATS

10.1. - Requirements.

- **10.1.1.** A minor plat, as defined by section 2 of this chapter [ordinance], shall meet all of the informational and procedural requirements set forth for an amending plat, and shall be accompanied by:
 - (a) One half-sized copy to scale of the plat;
 - (b) A completed application form;
 - (c) The required submission fee; and
 - (d) A certificate or some other acceptable form of verification from the Hays County Central Appraisal District showing that all taxes have been paid on the subject property and that no delinquent taxes exist against the property.
- 10.1.2. Official filing submission date. For the purpose of these regulations, the "official filing date" shall be the date upon which a complete submission for approval of a minor plat, that contains all required elements mandated by the Local Government Code and by this chapter, is deemed complete by the city administrator. To be considered complete, the submission must be rendered to the city within the timelines established by this chapter and accompanied by a check payable to the city in the amount of all applicable fees. It is only after the official filing date that any statutory period required for approval or disapproval of the plat shall commence to run. No application shall be deemed officially filed until the city administrator. Failure by the city administrator to make a determination of incompleteness within ten business days following the date on which the submission was first received by the city, shall result in the submission being deemed complete, the submission becoming an application, and the "official filing date" shall become the next uniform submittal date.

10.2. - Materials.

A copy of all application materials for a minor plat shall be submitted to the city for review in the same manner as for a final plat, or the application shall be deemed incomplete.

10.3. - Drainage plans.

Applicant must submit a drainage plan to city engineer, unless expressly waived in writing by the city engineer.

10.4. - Administrative approval.

10.4.1. Upon review and a finding that the minor plat is in full conformance with this and all other applicable city ordinances, the city administrator may approve, disapprove, or approve with conditions. Any decision made of the city administration may approve at the city administration

the minor plat by the city administrator shall be final.

- **10.4.2.** All minor plat applications that were disapproved by the city administrator, shall be provided to the applicant with a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval.
- **10.4.3.** If the applicant amends its filed plat application in response to the city administrator's initial disapproval, the applicant may file its amended application at the city on a date or day on which the city is accepting amended filings. The city will then have up to 15 days to approve or disapprove the amending plat application. The city administrator may either: (1) approve plat if the response adequately addresses each reason for the disapproval; or (2) disapprove plat if the response does not adequately address each reason for disapproval or creates new reasons for a violation of a statute or city ordinance. Any disapproval shall include a written statement of the reasons for disapproval that clearly articulates the reason for disapproval including citation to the law, a statute or city ordinance, that is the basis for the disapproval. Any plat that is disapproved after the city has reviewed the response in the form of an amended application may be refiled at any time as a new plat application.

10.5. - Notice and hearings.

Notice, a public hearing, and the approval of other lot owners are not required for the approval of a minor plat.

10.6. - Title.

The minor plat shall be entitled and clearly state that it is a "minor plat."

10.7. - Filing with county.

The minor plat shall be filed at the county in the same manner as prescribed for a final plat, and approval of a minor plat shall expire if all filing materials are not submitted to the city and if the plat is not filed at the county within the time periods specified for a final plat.

SECTION 11. - STREET DESIGN STANDARDS

11.1. - Transportation plan.

The arrangement, character, extent, width, grade and location of all streets shall conform to the City of Dripping Springs' Transportation Plan and ordinances, and shall be considered in their relation to existing and planned streets or driveways (whether within the City of Dripping Springs, within its ETJ area, or within adjacent municipal or county areas), to topographical conditions, to public safety, and in their appropriate relation to the proposed uses of the land to be served by such streets. Reserve or residual strips of land controlling access to or egress from other property, or to or from any street or alley, or having the effect of restricting or damaging the adjoining property for subdivision purposes, or which will not be taxable or accessible for improvements shall not be permitted in any subdivision unless such are required by the city in the public interest (such as to enhance public safety or other public interest). All streets shall be constructed in accordance with this section and with the city's ordinances.

11.2. - Requirements.

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11.3. - Adequacy of streets and thoroughfares.

- **11.3.1. Responsibility for adequacy.** The property owner shall assure that the subdivision is served by adequate streets and thoroughfares, and shall be responsible for the costs of rights-of-way and street improvements, in accordance with the following policies and standards, and subject to the city's cost participation policies on oversized facilities, and in accordance with the technical standards and transportation plan.
- **11.3.2.** General adequacy policy. Every subdivision shall be served by improved streets and thoroughfares adequate to accommodate the vehicular traffic to be generated by the development. Proposed streets shall provide a safe, convenient and functional system for traffic circulation; shall be properly related to the city's transportation plan, road classification system, comprehensive plan and any amendments thereto; and shall be appropriate for the particular traffic characteristics of each development.
- **11.3.3.** Road network. New subdivisions shall be supported by a road network having adequate capacity, ingress/egress, and safe and efficient traffic circulation. The adequacy of the road network for developments of 200 or more dwelling units, or for developments generating 2,000 or more "one-way" trips per day, or for developments involving collector or arterial streets not appearing on the city's adopted transportation plan, shall be demonstrated by preparation and submission, prior to the preliminary plat application, of a traffic impact analysis prepared, which takes into consideration the need to accommodate traffic generated by the development, land to be developed in common ownership and other developed property. In the event that the property to be developed, the planning and zoning commission may require a demonstration of adequacy pursuant to this section for additional phases or portions of the property as a condition of approval for the proposed preliminary plat. In the event that the applicant submits a traffic impact analysis for an entire phased development project, the city may require an update of the study for each subsequent phase of the development which reflects any applicable changed conditions. If the preliminary plat is in conformance with the transportation plan and if the preliminary plat is for a development of less than 200 dwelling units or for a development generating less than 2,000 "one-way" trips per day, then a traffic impact analysis is not required.
- **11.3.4. Approach roads and access.** All subdivisions with 50 or more lots or units must have at least two points of vehicular access and must be connected via improved roadways to the improved thoroughfare and street system (city, county and state, as may be applicable) by one or more approach roads of such dimensions and improved to such standards as are hereinafter set forth. Requirements for dedication of right-of-way and improvement of approach roads may be increased depending upon the size or density of the proposed development, or if such need is demonstrated by traffic impact analysis. This requirement shall be waived by the city upon demonstration by the applicant that the required access points are prohibited by TxDOT.
 - (a) "Two points of vehicular access" shall be construed to mean that the subdivision has at least two improved roads accessing the subdivision from the improved thoroughfare system, and the subdivision has at least two road entrances. The planning and zoning commission may, at its discretion and upon a finding that such will not compromise public safety or impede emergency access, accept a single median-divided entrance fron 319

the city's improved thoroughfare system provided that the median extends into the subdivision for an *Item 6.* unbroken length of at least 200 feet to an intersecting internal street which provides at least two routes to the interior of the subdivision. For example, the entrance street is not a dead-end or cul-de-sac, and it does not create a "bottleneck" allowing only one emergency route into the interior of the subdivision.

- (b) The subdivision shall be designed to provide adequate emergency access for public safety vehicles. Each residential lot in the subdivision shall have a minimum frontage on a dedicated public street as required by applicable zoning or 35 feet, whichever is greater, unless other provisions have been authorized through planned development district approval. Each nonresidential lot shall have a minimum frontage on a dedicated public street as required by applicable zoning or 50 feet, whichever is greater, unless other provisions have been authorized through planned by applicable zoning or 50 feet, whichever is greater, unless other provisions have been authorized through planned development approval.
- (c) At the discretion of the city engineer, the second access point may take the form of an unimproved dedicated public right-of-way without requiring improvement. The city engineer may waive the requirement for a second access point if justified by the presence of a multiple-lane entrance and exit, the width of the single access point, and any geographical or topographical considerations.

11.4. - Off-site improvements.

Where a traffic impact analysis (TIA) demonstrates the need for such facilities, or where the city believes public safety is at risk, the property owner shall make such improvements to off-site collector and arterial streets and intersections as are necessary to mitigate traffic impacts generated by the development or in conjunction with related developments. The city may participate in the costs of oversize improvements with the property owner as set out herein, and subject to the city's cost participation policies on oversized improvements. The extent of the public exaction for off-site improvements, and the city's level of participation in cost-sharing, may be established through an agreement.

11.5. - Street dedications.

- **11.5.1.** Dedication of right-of-way. The property owner shall provide all rights-of-way required for existing or future streets, and for all required street improvements, including perimeter streets and approach roads, as shown in the transportation plan and as required by the ordinances or by other valid development plans approved by planning and zoning commission. In the case of perimeter streets, half of the total required right-of-way width, as measured from the centerline, for such streets shall be provided unless the proposed development is on both sides of the street, in which case the full right-of-way width shall be provided, or unless there is some other compelling reason to require more than half of the right-of-way width (such as avoiding the infringement upon or demolition of existing structures, avoiding crossing a creek or floodplain or some other obstacle, or other similar circumstance). In some instances, more than half of the required width shall be required when a half-street is impractical or unsafe and depending upon the actual or proposed alignment of the street, such as in the case of a curved street, as may be required by the planning and zoning commission.
- **11.5.2. Perimeter streets.** Where an existing half-street is adjacent to a new subdivision or addition, the other half of the street shall be dedicated, and an appropriate amount of the street shall be improved, by the developer of the new subdivision or addition.
- 11.5.3. Slope easements. The dedication of easements, in addition to dedicated rights-of-way shall be required whenever, due to topography, additional width is necessary to provide adequate earth slopes. Such slopes shall be no steeper than three feet horizontal run to one foot vertical height, or a three-to-one (3:1) slope.

Item 6.

All streets and thoroughfares shall be paved to city standards and within rights-of-way as required by the transport plan and this chapter, and in accordance with the ordinances and other city standards as may be from time to time amended or adopted. The planning and zoning commission may approve alternate paving designs for residential subdivisions in accordance with the ordinances.

11.7. - Intersections and devices.

Intersection improvements and traffic-control devices shall be installed as warranted in accordance with the traffic impact analysis required by subsection (f) [section<u>11.11</u>], or as may be required by the city for traffic safety and efficiency. Construction and design standards shall be in accordance with city standards and the ordinances.

11.8. - Phased development.

Where a subdivision is proposed to occur in phases, the applicant, in conjunction with submission of the preliminary plat, shall provide a proposed schedule of development. The schedule shall set forth the intended plan of development and dedication of rights-of-way for streets and street improvements, whether on-site or off-site, intended to serve each proposed phase of the subdivision. The planning and zoning commission shall determine whether the proposed streets and street improvements herein established, and may require that a traffic impact analysis be submitted for the entire project or such phases as the planning and zoning commission determines to be necessary to adjudge whether the subdivision will be adequately served by streets and thoroughfares.

11.9. - Private streets.

Subdivisions having private streets may be established only under the terms set forth in this section, and pursuant to any other ordinances or guidelines for private street developments as may be adopted for use by the city either as part of this chapter or as separate ordinances or policies. All private streets shall be designed and constructed in accordance with the city's standards for publicly dedicated streets. The term "private street" shall be inclusive of alleys, if such are to be provided within the subdivision.

- **11.9.1.** Subdivision eligibility criteria. Private streets shall be permitted only within a subdivision satisfying each of the following criteria:
 - (a) The streets to be restricted to private use are not intended for regional or local through traffic circulation; and
 - (b) The subdivision is not located adjacent to an existing or approved public street subdivision that can be reasonably connected, even though the street connection would require construction of a bridge or culvert (in that instance, the two subdivisions shall be connected as public street subdivisions unless the bridge or culvert would be so expansive as to be impractical or unfeasible); and
 - (c) A mandatory property owners' (homeowners' or condominium) association, which includes all property to be served by the private streets, will be formed; and
 - (d) The subdivision conforms to any other special guidelines for private street developments as may be approved separately by the planning and zoning commission.
- **11.9.2.** Exclusion of certain streets. Roads or streets that are shown on the city's transportation plan, such as highways, major or minor thoroughfares or arterials, or collectors, shall not be used, maintained or constructed as private streets, and a private street subdivision shall not cross or interfere with an existing or future collector or arterial street. Also, the P&Z may deny the creation of any private street if, in their sole

judgment, the private street would negatively affect traffic circulation on public streets, or if it would im *Item 6.* access to the subject or adjacent property; impair access to or from public facilities including schools or parks; or if it would cause possible delays in the response time of emergency vehicles.

- **11.9.3.** Access onto public thoroughfare. A private street subdivision shall provide a minimum of 80 feet of access frontage on a public collector or arterial street for subdivision entrances in order to accommodate a mediandivided entrance with appropriate vehicle stacking, queuing and turnaround area. Primary access into a private street subdivision shall be from a major roadway, which has a minimum right-of-way of 60 feet, or from a larger roadway, as shown on the city's transportation plan. Restricted access entrances shall not be allowed from residential collector streets, minor residential or local streets, nor from alleys or private driveways or parking lots. A private street subdivision shall provide a minimum of 80 feet queuing distance between edge of pavement of public roadway and subdivision gate. As an alternative to the queuing distance the applicant may dedicate and promptly construct deceleration/acceleration turning lanes.
- **11.9.4. Parks, greenbelts and wildlife preserves excluded.** A private street subdivision shall not cross or interfere with public access to or enjoyment of an existing or future public pedestrian pathway, hike and bike trail, greenbelt, park or wildlife preserve as shown on the City of Dripping Springs' Parks and Open Space Plan or as already dedicated for public use.
- **11.9.5. Property owners', homeowners' or condominium association.** Subdivisions developed with private streets shall have a mandatory property owners' association which includes all property and lots served by the private streets. The association shall own and be responsible for the maintenance of private streets and appurtenances. The association documents shall be reviewed and approved by the city administrator and the city's attorney to ensure that they conform to these and other applicable city rules and regulations. The documents shall be filed of record at the county prior to final plat approval in order to ensure that there is an entity in place for long-term maintenance of private streets and appurtenances. The association may not be dissolved without the prior written consent of the city council. No portion of the association documents pertaining to the maintenance of private streets and alleys, and assessments therefor, may be amended without the written consent of the city council. The city will not assist in enforcing deed restrictions.
- 11.9.6. Private street lot. Private streets must be constructed within a separate lot or unit owned by the property owners' association. This lot or unit must conform to the city's standards for public street rights-of-way. An easement covering the street lot or unit shall be granted to the city providing unrestricted access to and use of the property for any purpose deemed necessary by the city. This right shall also extend to all utility providers operating within the city and to other necessary governmental service providers, such as the U.S. Postal Service. The easement shall also permit the city to remove any vehicle or obstacle within the street lot or unit that may impair emergency access.
- **11.9.7. Construction and maintenance cost.** The city shall not pay for any portion of the cost of constructing or maintaining a private street.
- **11.9.8.** Infrastructure and utilities. Any public water, sewer and drainage facilities, streetlights, and traffic-control devices, such as traffic signs, placed within the private street lot shall be designed and constructed to city standards, and shall be accepted by and dedicated to the city prior to filing the record plat for the subdivision. All private traffic-control devices and regulatory signs shall conform to the "Texas Manual of Uniform Traffic Control Devices", as amended, and to city standards. All city regulations relating to infrastructure financing, developer cost participation, and capital cost recovery shall apply to developments with private streets, with the exception of those applying to street construction.
 - (a) The metering for utilities such as water, gas and electricity shall be located on the individual lots to be

served, not grouped together in a centralized location(s), such as "gang-box" style metering stations. *Item 6.* which shall not be permitted.

- **11.9.9. Plans and inspections.** Development applications for subdivisions with private streets must include the same plans and engineering information required for public streets and utilities. City requirements pertaining to review and approval of improvements shall apply, and fees charged for these services shall also apply. The city may inspect private streets, and require any repairs necessary to ensure efficient emergency access and to protect the public health, safety, convenience and welfare.
- **11.9.10. Restricted access.** The entrances to all private streets shall be clearly marked with a sign, placed in a prominent and visible location, stating that the streets within the subdivision are private, and that they are not maintained nor regularly patrolled by the city. All restricted access entrances must be manned 24 hours every day, or they must provide a reliable, alternative means of ensuring city and emergency access to the subdivision, preferably with an opticom-type system for emergency access, by the city and other utility or public service providers, such as postal carriers and utility companies, with appropriate identification. The method to be used to ensure city and emergency access into the subdivision shall be approved by the planning and zoning commission and by all applicable emergency services providers prior to engineering release for construction of the development. If the association fails to maintain reliable access as required herein, the city may enter the subdivision and remove any gate or device which is a barrier to access at the sole expense of the association. The association documents shall contain provisions in conformity with this section which may not be amended without the written consent of the city council.
- **11.9.11.** Access restricted entrance design standards. Any private street (and any other type of gated entrance) which has an access control gate or cross-arm must have a minimum uninterrupted pavement width of 24 feet at the location of the gate or access control device, both ingress point and egress point, regardless of the type of device used. If an overhead, or lift-up, barrier is used, it must be a minimum of 16 feet in height above the road surface, and this clearance height shall be extended for a minimum distance of 50 feet in front of and behind the location of the device. All gates and cross-arms must be of a breakaway design. A minimum vehicle stacking distance of 100 feet shall be provided from the right-of-way line of the public road from which the private street subdivision is accessed to the first vehicle stopping point, which is usually an access request keypad, a telephone, or a guard's window. Adequate distance shall be provided between the access request point(s) and the entry barrier, or gate, to accommodate a vehicle turnaround as described below.
- **11.9.12.** A paved turnaround space must be located in front of (i.e., prior to passage of) any restricted access entrance barrier, between the access request device and the barrier or gate, to allow vehicles that are denied access to safely exit onto public streets without having to back up, particularly into the public street upon which the entrance is located. The design and geometry of such turnaround shall be of such pavement width and having such inside turning radius that it will accommodate smooth, single-motion U-turn movements by the following types of vehicles:
 - (a) Larger passenger vehicles, such as full-sized vans and pickup trucks;
 - (b) Passenger vehicles with short trailers up to 24 feet in length, such as small flatbed, camping or box-type trailers; and
 - (c) The types of service and utility trucks that typically visit or make deliveries to neighborhoods that are similar to the proposed private street development, such as utility service vehicles, postal or UPS delivery trucks, and two- to three-axle flatbed or box-type trucks used by contractors and moving companies.

The city administrator and the P&Z may require submission of additional drawings, plans or exhibits *Item 6.* demonstrating that the proposed turnaround will work properly, and that vehicle turnaround movements will not compromise public safety on the entry roadway or on the adjacent public street(s).

A site plan showing the design and location of all proposed access restricted entrances shall be submitted for review by the city engineer, along with the construction plans for the subdivision, and must be approved by the planning and zoning commission along with approval of the preliminary plat.

- **11.9.13.** Waiver of services. The subdivision final plat, property deeds and property owners' association documents shall note that certain city services shall not be provided for private street subdivisions. Among the services which will not be provided are: Routine law enforcement patrols, enforcement of traffic and parking regulations, and preparation of accident reports. Depending upon the characteristics of the development and upon access limitations posed by the design of entrances into the subdivision, other services (such as sanitation) may not be provided, as well.
- **11.9.14. Private streets: Application to convert to public streets.** The property owners' association documents shall contain provisions that describe how the association may make application [to] the city to accept private streets and any associated property as public streets and right-of-way upon written notice to all association members and upon the favorable vote of a majority of the membership. However, in no event shall the city be obligated to accept said streets as public. Should the city elect to accept the streets as public, then the city has the right to inspect the private streets and to assess the lot or unit owners for the expense of needed repairs concurrent with the city's acceptance of the streets. The city shall be the sole judge of whether repairs are needed. The city may also require, at the association's or the lot or unit owners' expense, the removal of any guard houses, access control devices, landscaping or other aesthetic amenities located within the street lot or within any other common area. The association documents shall provide for the city's right to such removal and assessment. Those portions of the association documents pertaining to the subject matter contained in this section shall not be amended without the written consent of the city council.
- **11.9.15.** Hold harmless. On the subdivision final plat shall be language whereby the property owners' association, as owner of the private streets and appurtenances, agrees to release, indemnify, defend and hold harmless the city, any other governmental entity, and any public utility entity for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury (including death) arising from the condition of the private streets, out of any use of access gates or cross-arms, or out of any use of the subdivision by the city or governmental or utility entity (such plat language is available from the city).
- 11.10. Escrow policies and procedures.
 - **11.10.1. Request for escrow.** Whenever this chapter requires a property owner to construct a street or thoroughfare, or other type of public improvement, the property owner may, if there exist unusual circumstances, such as a timing issue due to pending roadway improvements by another agency such as TxDOT or Hays County, that would present undue hardships or that would impede public infrastructure coordination or timing, request the city to construct the street or thoroughfare, usually at a later date, in exchange for deposit of escrow as established in this section. If more than one street or thoroughfare must be constructed in order to meet adequacy requirements for roadways, as demonstrated by a traffic impact analysis, the city administrator may prioritize roadways for which escrow is to be accepted and require the deposit of all funds attributable to the development in escrow accounts for one or more of such affected roadways. The city council shall review the particular circumstances involved (a traffic impact analysis may be required to facilitate the city council's

deliberations on the matter), and shall determine, at its sole discretion, whether or not provision of escrow *Item 6.* deposits will be acceptable in lieu of the property owner's obligation to construct the street or thoroughfare with his or her development.

- **11.10.2.** Escrow deposit with the city. Whenever the city council agrees to accept escrow deposits in lieu of construction by the owner of the property under this chapter, the property owner or developer shall deposit in escrow with the city an amount equal to his or her share of the costs of design, construction, permits, reviews and approvals, inspections, any additional land acquisition, and an appropriate (and realistic) inflation factor to ensure that the actual "future dollar" costs will be covered when actual construction occurs in the future. Such amount shall be reviewed and approved by the city administrator and by the city engineer, and shall be paid prior to release of construction plans by the city engineer. The obligations and responsibilities of the property owner shall be joint and several.
- **11.10.3.** Determination of escrow amount. The amount of the escrow shall be determined by using 110 percent of the maximum comparable "turnkey" bid price of construction of the improvements (including design, permits, reviews and approvals, inspections and any additional land acquisition that may be needed). Such determination of the escrow amount shall be made as of the time the escrow is due hereunder, and shall be subject to the review and approval of the city administrator and the city engineer.
- **11.10.4.** Termination of escrow. Escrows, or portions of escrowed amounts, which have been placed with the city under this section and which have been held for a period of ten years from the date of such payment or agreement, in the event that the city has not authorized the preparation of plans and specifications for construction of such roadway facilities for which the escrow was made, shall, upon written request, be returned to the property owner, along with one-half of its accrued interest. Such return does not remove any obligations of the property owner for construction of the required facilities if a building permit has not been issued on the subject lot or if a new building permit is applied for.
- **11.10.5. Refund.** If any street or highway for which escrow is deposited is constructed by a party other than the city or is reconstructed by another governmental authority at no cost to the city, the escrowed funds and accrued interest shall be refunded to the property owner or applicant who originally paid the escrow amount after completion and acceptance of the public improvements. In the event that a portion of the cost is borne by the city and the other portion of the cost by another party or governmental authority, the difference between the property owner's actual proportionate cost and the escrowed funds, including accrued interest, if any, shall be refunded after completion and acceptance of the improvements.
- **11.10.6. Interest limitation.** If money is refunded within six months of deposit, only the principal will be refunded. Monies returned after this date will be refunded with one-half of its accrued interest.

11.11. - Traffic impact analysis.

Any proposed development project or plat involving a significant change to a proposed roadway alignment from that shown on the City of Dripping Springs' Transportation Plan (or involving a development of 200 or more dwelling units, or for developments generating 2,000 or more "one-way" trips per day) shall be preceded by submission, city staff and P&Z review, and city council approval of a traffic impact analysis. Such a proposed roadway alignment change shall also be preceded by (or simultaneous with) an amendment to the city's transportation plan showing the new proposed alignment. Failure to provide for such approvals prior to submission of a preliminary plat shall be grounds for denial of the plat submission as incomplete.

- (a) <u>General site description</u>. The traffic impact analysis shall include a detailed description of the road <u>Item 6</u>. mile of the site, a description of the proposed land uses, the anticipated states of construction, and the antic completion date of the proposed land development shall be provided. This description, which may be in the shall include the following items: (1) all major intersections; (2) all proposed and existing ingress and egress all existing roadway widths and rights-of-way; (4) all existing traffic signals and traffic-control devices; and (5 and proposed public transportation services and facilities within a one mile radius of the site.
- (b) <u>Proposed capital improvements</u>. The traffic impact analysis shall identify any changes to the roadway network within one mile of the site that are proposed by any government agency or other developer. This description shall include the above items as well as any proposed construction project that would alter the width or alignment of roadways affected by the proposed development.

11.11.2. Roadway impact analysis.

- (a) <u>Transportation impacts</u>:
 - (1) <u>Trip generation</u>. The average weekday trip generation rates (trip ends), the average weekend trip generation rates (for uses other than residential or institutional), the highest average a.m. and p.m. hourly weekday trip generation rates, and the highest hourly weekend generation rates (for uses other than residential or institutional) for the proposed use shall be determined based upon the trip generation rates contained in the most recent edition of the Institute of Transportation Engineers' Trip Generation book; or shall be based upon data generated by actual field surveys of area uses compatible to the proposed use and approved by the city administrator and the city engineer.
 - (2) <u>Trip distribution</u>. The distribution of trips to arterial and collector roadways within the study area (general site description) above shall be in conformity with accepted traffic engineering principles, taking into consideration the land use categories of the proposed development; the area from which the proposed development will attract traffic; competing developments (if applicable); the size of the proposed development; development phasing; surrounding existing and anticipated land uses, population and employment; existing and projected daily traffic volumes; and existing traffic conditions identified.
- (b) <u>Adequacy determination</u>. The roadway network included within the traffic impact analysis shall be considered adequate to serve the proposed development if existing roadways identified as arterials and collectors can accommodate the existing service volume, and the service volume of the proposed development, and the service volume of approved but unbuilt developments holding valid, unexpired building permits at a level of service "C" or above (refer to the city's transportation plan for discussion of levels of service).

11.11.3. Intersection analysis.

(a) Level of service analysis. For intersections within the roadway traffic impact analysis area (general site description), a level of service analysis shall be performed for all arterial to arterial, arterial to collector, collector to arterial, and collector to collector intersections, and for any other pertinent intersections identified by the city administrator or by the city engineer. Also, level of service analyses will be required on all proposed site driveway locations for all nonresidential developments. The city may waive analysis of minor intersections and site driveway locations within the one-mile radius. The level of service analysis shall be based upon the highest hourly average a.m. or p.m. peak weekday volume or highest average hourly peak weekend volume as determined from a two-day survey of weekday volumes and, where necessary, a one-day survey of weekend volumes. The level of service analysis shall take into consideration the lane geometry, traffic volume, percentage of right-hand turns, percentage of left-ha

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turns, percentage (and typical size) of trucks, intersection width, number of lanes, signal timing and *Item 6.* progression, roadway grades, pedestrian and bicycle flows, school routes, number of accidents, and peak hour factor.

- (b) <u>Adequacy analysis</u>. The intersections included within the traffic impact analysis shall be considered adequate to serve the proposed development if existing intersections can accommodate the existing service volume, the service volume of the proposed development, and the service volume of approved but unbuilt developments holding valid, unexpired building permits at level of service "C" or above.
- **11.11.4.** Effect of adequacy determination. If the adequacy determination for roadways and intersections indicates that the proposed development would cause a reduction in the level of service for any roadway or intersection within the study area that would cause the roadway to fall below the level of service required hereto, the proposed development shall be denied unless the developer agrees to one of the following conditions:
 - (a) The deferral of building permits until the improvements necessary to upgrade the substandard facilities are constructed;
 - (b) A reduction in the density or intensity of development;
 - (c) The dedication or construction of facilities needed to achieve the level of service required herein; or
 - (d) Any combination of techniques identified herein that would ensure that development will not occur unless the levels of service for all roadways and intersections within the traffic impact analysis study are adequate to accommodate the impacts of such development.
- 11.12. Streets not on transportation plan.

For streets that are not shown on the city's transportation plan, such as local residential streets, the arrangement of such streets within a subdivision shall:

- **11.12.1.** Provide for the continuation or appropriate projection of existing streets from or into surrounding areas;
- **11.12.2.** Conform to a plan for the neighborhood approved or adopted by the city council to meet a particular situation where topographical or other conditions make continuance or conformity to existing streets impractical;
- **11.12.3.** Provide for future access, such as by stubbing streets for future extension, to adjacent vacant areas which will likely develop under a similar zoning classification or for a similar type of land use; and
- **11.12.4.** Not conflict in any way with existing or proposed driveway openings (including those on the other side of an existing or planned median-divided arterial, in which case new streets shall align with such driveway openings such that median openings can be shared).
- 11.13. Residential collector streets.

Residential collector streets and minor residential streets shall be laid out such that their use by through traffic will be discouraged, such as via circuitous routes or multiple turns or offsets, but such that access is provided to adjacent subdivisions.

11.13.1. Wherever the right-of-way width of a collector or residential street must transition to a greater or lesser width, such transition shall occur along the front, side or rear lot lines of adjacent lots (for a reasonable distance) and shall not occur within the street intersection itself. In other words, the right-of-way width shall be the same on both sides of the street intersection.

- **11.13.2.** To the greatest extent possible, the number of lots fronting along residential collector streets shall be r to ensure adequate traffic safety and efficiency. No more than 20 percent of the total centerline length of a collector may have residential lots fronting onto the collector on each side of the street. For example, a collector street has total centerline length (from one terminus to another) of 1,000 feet may have lots fronting onto it with a total from distance of 200 feet on each side of the street. Calculations shall be submitted with the preliminary plat applicat verifying that lots fronting onto a collector street do not exceed the above.
- **11.13.3.** At least 50 percent of the total centerline length of all streets (including collector streets) within a residential subdivision (or within each phase of a residential subdivision, unless otherwise approved by planning and zoning commission to apply to the subdivision in its entirety rather than each individual phase) shall be curvilinear in design. Calculations shall be submitted with the preliminary plat application verifying that the above curvilinear street requirement is being met.

11.14. - Relation to arterial.

Where a subdivision abuts or contains an existing or proposed arterial street, the planning and zoning commission may require marginal access streets, reverse frontage (lots which back onto the arterial), deep lots with rear service alleys, or such treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

11.15. - Reserve strips.

Reserve strips controlling access to streets shall be prohibited except where their control is required by the city and approved by the planning and zoning commission.

11.16. - Intersecting streets.

Intersecting, undivided streets with centerline offsets of less than 150 feet shall be avoided. Intersecting streets onto an existing or future divided roadway must be configured such that the centerline offset will accommodate the appropriate median opening and left turn lanes (with required transition and stacking distances) on each divided roadway, and shall be aligned with any existing or proposed streets or driveways on the opposite side of the divided roadway (in order to share the median opening).

11.17. - Intersections with major thoroughfares.

A street intersection with a major thoroughfare shall be at a 90-degree angle and shall be tangent to the intersecting street for at least 100 feet. All other street intersections shall be laid out so as to intersect as nearly as possible at a 90-degree angle or radial to the centerline of the intersecting street for the full right-of-way of the intersecting street, and tangent to the intersecting street for at least 50 feet. No street shall intersect at an angle that is less than 85 degrees.

11.18. - Rights-of-way.

Street right-of-way widths shall be as shown on the transportation plan and as defined by the corresponding roadway cross-sections on the transportation plan and in the city's ordinance.

11.19. - Half-streets.

Item 6.

Construction of half-streets shall be prohibited, except when essential to the reasonable development of the subdlement in conforming with the other requirements of this chapter and the transportation plan, and where the city council makes a determination that there is no immediate benefit to be gained by constructing the full street section since no access from the street will be needed by the subdivision in question. The city council may also find that it would be more practical, or cost effective, to delay construction of the other half of a street until when the adjoining property is developed.

11.20. - Owner's responsibility.

If the property owner is responsible for one-half of the street, then the property owner shall either construct the facility along with the development or shall provide escrow for the construction cost of his or her share of the facility (including all applicable street appurtenances such as median openings, left turn lanes into the development, sidewalks with barrier-free ramps, drainage structures, etc.) unless the city participates in the construction of the facility. Whenever a partial street has been previously platted along a common property line, the other portion of the street right-of-way shall be dedicated such that the right-of-way is increased to the street's ultimate planned width. Improvements shall be made to all on-site facilities.

11.21. - Maximum block length.

The following applies to subdivision block or street segment design (including a looped street) as measured along the street centerline and between the point(s) of intersection with other through streets, but does not include blocks with culde-sacs or dead-ends:

- 11.21.1. Urban subdivisions. Residential blocks in an urban subdivision shall not exceed 1,200 feet between the centerlines of street intersections; however, if blocks are parallel to and adjacent to an arterial road as defined by the county, such blocks shall not exceed 1,600 feet between the centerlines of street intersections. Commercial and industrial blocks in areas zoned for each shall not exceed 2,000 feet between the centerlines of street intersections.
- **11.21.2. Rural and suburban subdivisions.** Residential and suburban subdivision blocks shall not exceed 2,000 feet between the centerlines of street intersections.
- **11.21.3.** Minimum block length is 400 feet.

11.22. - Cul-de-sac.

In general, a cul-de-sac street shall not be longer than 2,000 feet, and at the closed end shall have a turnaround bulb with an outside pavement diameter of at least 80 feet and a right-of-way diameter of at least 110. The length of a cul-de-sac shall be measured from the centerline of the intersecting street to the centerline of the cul-de-sac bulb. Cul-de-sacs may be up to 3,000 feet in length if each lot accessing the cul-de-sac has at least 200 feet of street frontage.

- **11.22.1.** The P&Z may approve, waivers for overlength streets or cul-de-sacs, whether temporary or permanent, upon considering the following:
 - [(a)—(c) Reserved;]
 - (d) Alternative designs which would reduce street or cul-de-sac length;
 - (e) The effect of overlength streets upon access, congestion, delivery of municipal services, and upon convenience to residents of the subdivision in traveling to and from their homes; and
 - (f) Means of mitigation, including but not limited to additional mid-block street connections, limitation on the number of lots to be served along an overlength street segment or cul-de-sac, temporary (or permanent) points of emergency access, and additional fire protection measures.

Except in unusual cases, no dead-end streets will be approved unless such dead-end streets are provided to connect with future streets on adjacent land. In the case of dead-end streets which will eventually be extended into the adjacent subdivision, no more than one lot or unit (per side) can front onto the dead-end street stub unless a temporary turnaround bulb (with the appropriate temporary street easement) is provided at the end. A temporary dead-end street shall not exceed the maximum allowed length of a normal cul-de-sac, and the temporary turnaround bulb must be constructed like a cul-de-sac (the city engineer may authorize the use of asphalt or other durable paving material than concrete for the arc, or "wing", portions of the temporary turnaround bulb in order to minimize the cost of removing those portions later on). A note shall be placed on the final plat clearly labeling any temporary dead-end streets (if any) that will at some point be extended into the adjacent property, and signage shall be placed at the end of the constructed street stub, such as on the barricade, also stating that the street will be extended in the future. Signage and lettering must be large enough to be legible by a person with normal vision at a 20-foot distance. Any required temporary turnaround easements shall be shown on the final plat along with their appropriate recording information, if they are off-site or established by separate instrument.

11.24. - Extension of existing streets.

New streets which extend existing streets shall bear the names of the existing streets, and shall be dedicated at equal or greater right-of-way widths than the existing streets for an appropriate transition length, if applicable.

11.25. - Construction of new streets.

All new streets dedicated within a subdivision shall be constructed in accordance with paving widths and specifications as set forth in the ordinances of the City of Dripping Springs at the time at which the preliminary plat application is officially submitted and deemed a complete application.

SECTION 12. - ALLEYS AND EASEMENTS

12.1. - Alleys.

- **12.1.1.** Service alleys in nonresidential districts, if provided or constructed by the developer, shall be a minimum right-ofway width of 30 feet and a pavement width of 24 feet.
- **12.1.2.** Residential alleys shall be permitted in single-family subdivisions within the city and its ETJ under the following standards:
 - (a) In residential districts, alleys shall be parallel, or approximately parallel, to the frontage of the street.
 - (b) Alleys in residential districts shall provide a minimum of 20 feet of right-of-way and 12 feet of pavement.

12.1.3. General alley design standards.

- (a) Alleys shall be paved in accordance with the City of Dripping Springs' TCSS and construction standards that are in effect at the time the preliminary plat application is officially submitted and deemed a complete application.
- (b) Where the deflection of alley alignment occurs, the design of the paving and property line shall be as established by the TCSS.
- (c) Dead-end or "hammerhead" alleys shall not be allowed. Alleys must have adequate turnouts and street

entrances such that vehicular traffic flow is continuous and efficient. Where a temporary dead-end alle *Item 6.* situation is unavoidable, a temporary turnaround bulb or turnout onto a street, either of which will need a temporary easement for street or alley purposes, shall be provided as determined by the city engineer.

- (d) Alleys may not exceed a maximum length of 1,600 feet, as measured along the centerline of the alley and between intersections with other alleys or entrances onto streets (at the right-of-way line of the street at the alley entrance). The P&Z may recommend, and the planning and zoning commission may approve, variances for overlength alleys upon consideration of the following:
 - (1) Alternative designs which would reduce alley length;
 - (2) The effect of overlength alleys upon access, congestion, delivery of municipal services, and upon convenience to residents of the subdivision in accessing rear driveways and in driving around to the front of their homes; and
 - (3) Means of mitigation, including but not limited to additional mid-block alley turnouts, limitation on the number of lots to be served along a single alley segment, temporary points of access, and additional fire protection measures.
- (e) Alley intersections shall be perpendicular and at a 90-degree angle or radial to the intersecting alley centerline for the full alley right-of-way width, and intersection pavement shall be of sufficient width and inside radius to accommodate waste collection and emergency vehicles. Intersections shall be three-way wherever possible and four-way intersections shall be avoided. No alley intersection serving more than four directions shall be allowed.

12.2. - Easements.

- **12.2.1.** The minimum width for city utility easements shall be 20 feet or as otherwise required by the city engineer. The width of easements for other utility providers, such as for gas, electric, telephone or cable television, shall be as required by that particular entity. It shall be the applicant's responsibility to determine appropriate easement widths required by other utility companies.
- 12.2.2. Where a subdivision is traversed by a watercourse, drainageway or channel, there shall be provided a storm drainage easement conforming substantially with the 100-year floodplain of such course and of such additional width as may be designated by the city engineer, subject to determination according to proper engineering considerations. The required width shall conform to the requirements set forth by the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers, and/or the city. Parallel streets or parkways shall be required adjacent to certain portions of creek[s] or drainageways to provide maintenance access and/or public access and visibility into public open space or recreation areas. The number of lots that back or side onto creeks, drainageways, public parks and open spaces, and public school sites shall be severely limited, and possibly prohibited, such that public access, visibility, safety and security within these areas are maximized. Other utilities may be permitted within a drainage or floodway easement only if approved by the city engineer and any other applicable entity requiring the drainage or floodway easement.
- **12.2.3.** A lot's or unit's area shall be computed inclusive of all easements. However, there shall be a minimum buildable area, exclusive of required easements, buffer zones and setbacks for each lot or unit.
- **12.2.4.** Where alleys are not provided in a residential subdivision, a minimum 20-foot wide utility easement shall be provided along the front of all lots, adjacent to and flush with the street right-of-way line for the potential placement of utility facilities.
- **12.2.5.** For new development, all necessary on-site easements shall be established on the subdivision plat and not by separate instrument, and they shall be labeled for the specific purpose, and to the specific entity if other than 331

city, for which they are being provided. Examples include, but are not limited to, the following: A water, san *Item 6.* sewer or drainage easement, which is dedicated to the city for a water or sanitary sewer line or for a drainage structure; an access easement, which is dedicated to the public for unrestricted access purposes; a fire lane easement, which is dedicated to the city and its fire suppression and emergency medical service providers for access purposes; an electrical, gas or telephone easement, which is dedicated to the specific utility provider that requires the easement; and so on.

SECTION 13. - BLOCKS

13.1. - Length, width and shape.

The length, width and shapes of blocks shall be determined with due regard to:

- 13.1.1. Provision of adequate building sites suitable to the special needs of the type of use contemplated;
- 13.1.2. Zoning requirements as to lot or unit sizes, setbacks and dimensions (if within the city's limits); and
- **13.1.3.** Needs for convenient access, circulation, control and safety of street traffic and for pedestrians or bicyclists traveling to a public park or school site or other facility within or close to the neighborhood.

13.2. - Intersecting streets.

Intersecting streets, which determine the lengths and widths of blocks, shall be provided at such intervals as to serve cross-traffic adequately, to provide adequate fire protection, and to conform to customary subdivision practices. Where no existing subdivision or topographical constraints control, the block lengths shall not exceed 1,200 feet in length. Where no existing subdivision or topographical constraints control, the blocks shall not be less than 400 feet in length; however, in cases where physical barriers or property ownership creates conditions where it is appropriate that these standards be varied, the length may be increased or decreased (through issuance of a waiver by the planning and zoning commission with plat approval) to meet the existing conditions having due regard for connecting streets, circulation of traffic and public safety.

SECTION 14. - LOTS

14.1. - Requirements.

Lots or units shall conform to the minimum requirements of the established zoning district, if located within the city's city limits.

14.2. - Frontage.

Each lot or unit on a subdivision plat shall front onto a dedicated, improved public street unless platted as an approved private street subdivision in accordance with this chapter. Lot width and access shall conform with the provisions of the City of Dripping Springs' Zoning Ordinance (if within the city's limits), comprehensive plan, and any other applicable city code or ordinance. Commercial properties shall utilize joint use access easements to limit curb cuts along streets, and provide cross access easements for adjacent commercial properties.

In all cases, lots or units shall have a minimum of 30 feet along a dedicated, improved street.

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For subdivisions developed under the city's conservation development option, minimum lot or unit frontages shall *Item 6.* linear feet if served by private, on-site sewage disposal systems, and 50 linear feet if served by a public or private centralized sewer system.

14.3. - Irregular-shaped lots.

Irregular-shaped lots or units shall have sufficient width at the building line to meet lot width and frontage requirements of the appropriate zoning district (if within the city's limits), and shall provide a reasonable building pad without encroachment into front, side or rear yard setbacks or into any type of easement. Also, the rear width shall be sufficient to provide access for all necessary utilities, including access for driveways and solid waste collection when alleys are present (minimum 20-foot alley frontage). Flag lots are prohibited. In general, triangular, severely elongated or tapered lots or units shall be avoided, and the city reserves the right to disapprove any lot which, in its sole opinion, will not be suitable or desirable for the purpose intended, which is an obvious attempt to circumvent the purpose and intent of lot or unit configuration or lot or unit width minimums, or which is so oddly shaped as to create a hindrance to the logical lot or unit layout of surrounding properties.

14.4. - Side lots or units.

Side lot lines or unit boundaries shall be at 90-degree angles or radial to street right-of-way lines to the greatest extent possible. The city reserves the right to disapprove any lot or unit which, in its sole opinion, is shaped or oriented in such a fashion as to be unsuitable or undesirable for the purpose intended, or which is not attractively or appropriately oriented toward its street frontage.

14.5. - Double frontage.

Double frontage lots or units shall be avoided, except where they may be essential to provide separation of residential development from traffic arterials, as defined in section 3.1 [section <u>11.14</u>], or to overcome a specific disadvantage or hardship imposed by topography or other factors. Where lots or units have double frontage, building setback lines shall be established for each street side, and rear yard screening shall be provided. Residential lots shall not back onto any residential street or collector street within a residential area or neighborhood, and shall not have more than one-half of its perimeter boundaries along streets.

14.6. - Minimum lot sizes or unit in ETJ.

As part of the city's comprehensive water quality protection program, the minimum lot or unit sizes in the ETJ shall be in accordance with this chart:

Wastewater System	Aquifer Zone	Surface or Rainwater	Public Water Supply	Private Well
Public Sewer	Recharge	1.5	1.5	2.0
	Contributing	.75	.75	1.5
	WQBZ	2.0/Av 3.0	2.0/Av 3.0	2.0/Av 3.0

Private Septic	Recharge	2.0	2.0	2.0	Item 6.
	Contributing	1.5	1.5	2.0	
	CWQZ	2.0	2.0	2.0	
	WQBZ	2.0/Av 3.0	2.0/Av 3.0	2.0/Av 3.0	

14.7. - Minimum lot or unit sizes in city limits.

The minimum lot size or unit in the city limits shall be three-quarters of an acre for lots served by a public water supply, and one acre for those served by a private well.

	Public Water Supply	Private Well
Private Septic	.75	1.0

SECTION 15. - SIDEWALKS

15.1. - Purpose.

- **15.1.1.** Pedestrian concrete walkways (sidewalks) shall be required for all residential and nonresidential developments within the city limits and ETJ. Sidewalk width and location shall be in accordance with the transportation master plan (TMP).
- **15.1.2.** When not defined by the TMP the following shall apply:
 - (a) <u>For commercial site developments</u>. A minimum five-foot sidewalk shall be provided within adjacent street right-of-way (ROW) along the entire frontage of the property.
 - (b) <u>For residential subdivisions</u>. A minimum five-foot sidewalk shall be required within ROW on both sides of all streets.

(Ord. No. 2020-39, § 2, 7-14-20)

15.2. - Requirements.

- **15.2.1.** Sidewalks shall be constructed in compliance with the Dripping Springs Technical Criteria Manual (DSTC).
- **15.2.2. Sidewalk plan.** A sidewalk plan shall be required on all construction plans and site development plans. Plans shall show the location of all proposed sidewalks and shall state at what stage of the project they will be constructed. If compliant sidewalks have already been constructed, the constructed sidewalks shall appear on all construction plans and site development plans.

- **15.2.3** Sidewalk alignment. Sidewalk alignment shall comply with that set forth in the TMP with the following excellence *Item 6.*
 - (a) A sidewalk shall be allowed to meander within the ROW or an easement upon approval by the development review committee.
 - (b) Routing to clear poles, trees or other obstacles shall be subject to approval by the development review committee.
 - (c) When not defined by the TMP sidewalks shall be constructed within the ROW, a minimum one foot away from the ROW line, and at least five feet away from the street curb.
 - (d) In certain instances, the development review committee may approve placement of sidewalks adjacent or closer than five feet to the curb or located on private property and in a public access easement, provided that such placement benefits the general public by allowing more space for pedestrian safety, drainage facilities, landscaping or tree preservation.
 - (e) Where no raised curb is installed, the sidewalk shall be at least ten feet from the edge of pavement (EOP) unless otherwise approved by the development review committee.
- **15.2.4.** Root barriers shall be required, as determined by the city engineer, in locations where trees are (or will be) in close proximity to the sidewalk.
- **15.2.5. ADA requirement.** All sidewalks shall be designed and constructed to meet the Texas Accessibility Standards administered by the Texas Department of Licensing and Regulation and the Americans with Disabilities Act, as amended. Barrier-free ramps shall be constructed at all street intersections and at any other locations deemed appropriate by the city due to anticipated pedestrian travel patterns.
- **15.2.6.** Finish. All sidewalks shall have a light broom-swept finish to provide a non-slip surface.

(Ord. No. 2020-39 , § 2, 7-14-20)

- 15.3. City acceptance and certificate of occupancy.
 - **15.3.1.** Sidewalks along streets or in public sidewalk easements are considered part of the overall development's required public improvements and shall be installed prior to acceptance of the subdivision public improvements by the city and prior to final plat approval, unless fiscal surety is provided.
 - (a) Exception: To prevent damage to newly constructed sidewalks. Construction of sidewalks fronting residential or commercial lots may occur after city acceptance of public infrastructure and final plat approval if fiscal surety is provided.
 - **15.3.2.** Certificate of occupancy will not be issued for any lot or unit within the subdivision until the required sidewalks are in place.

(Ord. No. 2020-39 , § 2, 7-14-20)

15.4. - Fee in lieu of construction.

- **15.4.1.** Fee-in-lieu of construction of sidewalks may be accepted when approved by the development review committee.
- **15.4.2.** The development review committee shall consider the following criteria when evaluating a request for fee-in-lieu of construction for sidewalks:
 - (a) Proximity to the nearest existing sidewalk;
 - (b) Proximity to public facilities, such as public or private schools, libraries and other government buildings;
 - (c) Whether any public sidewalk improvements are planned or contemplated in the area; and

- (d) Any other information deemed appropriate by the development review committee.
- **15.4.3.** Fee-in-Lieu payments shall be placed in the City of Dripping Springs Sidewalk Fund. Payments will be calculated based on the square feet of sidewalk construction waived as set out in the fee schedule. Funds shall be used for the sole purpose of sidewalk improvements and pedestrian amenities in public right-of-way, parks and sidewalk easements within the city. The fee in lieu of sidewalks shall be paid in full to the city prior to approval of the construction plans or site development plans.

(Ord. No. 2020-39 , § 2, 7-14-20)

SECTION 16. - BUILDING LINES

16.1. - Minimum building setback lines.

Front, rear, side and street side building lines shall be consistent with the zoning ordinance requirements for the district in which the development is located (if subject to the city's zoning regulations) and with any other applicable city ordinance, respectively. Any city limit plats shall identify all setbacks via a plat note that states "setbacks shall comply to the zoning regulations at the time of permitting." For property that is not subject to the city's zoning regulations, such as property that lies within the city's ETJ, the minimum front building line (for residential and nonresidential lots) shall be ten feet and the minimum rear and side building lines (for residential and nonresidential lots) shall be five feet.

16.2. - Encroachments.

No person shall construct an auxiliary structure or building, porch, roof, or swimming pool encroaching into the building setback lines. It shall be an offense for any part or appurtenance of auxiliary structure or building, porch, or swimming pool to encroach into the building setback lines, unless authorized by the city's zoning or building codes.

SECTION 17. - UTILITY SERVICES

17.1. - Definitions.

For purposes of this section, the following meanings shall apply:

- (a) <u>Utility services</u>: The facilities of any person, firm or corporation providing electric, natural gas, telephone, cable television, or any other such item or service for public use approved but not provided by the City of Dripping Springs.
- (b) *Feeder or feeder/lateral line*: High voltage supply electric lines carrying more than 69,000 volts that emanate from substations used to distribute power through an area to an unspecified number of customers.
- (c) <u>Lateral lines</u>: Those electric or telephone lines used to distribute power from a feeder line to a single subdivision. These electric lines are normally connected to a feeder line through a sectionalizing device such as a fuse.
- (d) <u>Service lines</u>: Those electric lines used to connect between the utilities' supply system or lateral lines and the end user's meter box.
- 17.2. Provision for utility services.

All major subdivision plats and construction plans submitted to the City of Dripping Springs for approval of land the be residential in use shall provide for utility services such as electrical, gas, telephone and cable television utility lines, including lateral or service distribution lines, and wires to be placed underground. Feeder and other major transmission lines may remain overhead within the appropriate easements. However, an applicant shall endeavor and, whenever practical, the city shall require that feeder lines are placed away from major or minor thoroughfares or arterials, as shown on the transportation plan. Whenever practical, feeder lines which are to be placed overhead shall not be placed along both sides of the street right-of-way. Verification of acceptance of easement locations and widths by the public utilities shall be provided to the city, by the applicant, prior to final plat approval by the planning and zoning commission, and all easements shall be reviewed by the utility companies and by the city engineer (for those to the city) prior to granting final approval for any residential subdivision affected by this section. The applicant shall also, prior to final plat approval, provide a letter of commitment from each utility provider, such as those providing electricity, gas, telephone and cable television, who will serve the development that said utility providers will ensure the provision of necessary infrastructure and service to all portions of the proposed development within 12 months following final plat approval. Failure to submit such letters of commitment from utility providers shall constitute grounds for denial of the final plat application on the basis that there is no written assurance that the development can be served by essential utility services.

17.3. - Utility company criteria.

Each of the utility companies shall be responsible for developing administrative policies, criteria for easement size, and cost reimbursement procedures for the installation and extension of their underground utilities. Nothing herein shall prohibit or restrict any utility company from recovering the difference in cost of overhead facilities and underground utilities from the property owner in accordance with the provisions of such utility's approved tariff. No utility company shall be required or permitted to begin construction of underground facilities unless and until the property owner or developer of the subdivision has made arrangements satisfactory to the specific utility company for the payment of such difference between the cost of overhead facilities and underground facilities.

17.4. - Temporary construction service.

Temporary construction service may be provided by overhead electric lines and facilities without obtaining a waiver or special exception, provided that when the underground utility service to any portion of a subdivision is completed, such overhead electric lines and facilities are promptly removed.

17.5. - Underground.

Nothing in this section shall be construed to require any existing facilities in place prior to the effective date of this chapter to be placed underground.

17.6. - Meters.

The metering for utilities such as water, gas and electricity shall be located on the individual lots or units to be served, not grouped together in a centralized location(s), such as "gang-box" style metering stations, which shall not be permitted.

17.7. - Easements.

The locations, widths and configurations of easements for any utility service provider other than the City of Dripping Springs shall be determined, approved and acquired (if necessary) by the applicable utility service provider.

18.1. - Water supply.

- **18.1.1.** Public water supply for all new subdivisions shall be connected with the appropriate publicly certified water when available, reasonable and practical, and shall be capable of providing water for health and emergency purposes.
- **18.1.2.** Individual wells may be used in accordance with the rules of Hays County and the Hays-Trinity Groundwater Conservation District.
- **18.1.3.** Alternative sources of water, such as rainwater collection systems, are highly encouraged.
- **18.1.4. Minimum standards.** Water system with mains of sufficient size and having a sufficient number of outlets to furnish adequate and safe domestic water supply and to furnish fire protection to all lots or units shall be provided. Water lines shall extend to the property line in order to allow future connections into adjacent undeveloped property, and a box for the water meter(s) for each lot or unit shall be installed either in the right-of-way or immediately adjacent to the right-of-way in a water meter easement.
- 18.1.5. An alternative source of water may be used subject to city approval and provided that all appropriate permits are procured from the city, the U.S. Army Corps of Engineers, the TCEQ, LCRA, USFWS, the Hays-Trinity Groundwater Conservation District, and any other applicable agency(s). The design and construction of water system improvements and alternative water sources shall comply with the following standards:
 - (a) Design and construction of a water source on the site shall be in accordance with applicable regulations of the USFWS, TCEQ, Hays County, the Hays-Trinity Groundwater Conservation District, and the Lower Colorado River Authority (LCRA) standards, whichever is the most stringent requirement.
 - (b) Design and construction of water service shall be in accordance with the standards in the city's ordinances, and in accordance with TCEQ, Hays County, the Hays-Trinity Groundwater Conservation District, and the Lower Colorado River Authority (LCRA) standards, whichever is the most stringent requirement.
 - (c) Design and construction of a fire protection and suppression system shall be in accordance with the standards in the ordinances, and in accordance with the fire department and applicable fire code.
 - (d) Water wells may be used if approved by Hays County and if the requirements enacted by the Hays-Trinity Groundwater Conservation District (or other applicable district) are met, and water is not available from a surface provider.

18.2. - Wastewater facility.

- **18.2.1.** Wastewater treatment for all new subdivisions shall be served by an appropriate wastewater collection and treatment system. The design and construction of the wastewater system improvements shall be in accordance with the standards in the city's ordinances, and in accordance with TCEQ, Hays County, and the Lower Colorado River Authority (LCRA) standards, whichever is the most stringent requirement.
- **18.2.2.** The applicant shall be responsible for:
 - (a) Phasing of development or improvements in order to maintain adequate water and wastewater services;
 - (b) Extensions of utility, water, and wastewater lines to connect to existing utility services;
 - (c) Providing and/or procuring all necessary easements for the utilities (whether on-site or off-site);
 - (d) Providing proof to the city of adequate water and wastewater service;

- (e) Providing provisions for future expansion of the utilities if such will be needed to serve future developer *Item 6.* city's oversize participation policies, if applicable;
- (f) Providing all operations and maintenance of the utilities, or providing proof that a separate entity will be responsible for the operations and maintenance of the utilities;
- (g) Providing all fiscal security required for the construction of the utilities;
- (h) Obtaining approvals from the applicable utility providers if other than the city; and
- (i) Complying with all requirements of the utility providers, including the city.
- **18.2.3.** Extension of water and wastewater lines shall be made along the entire frontage of the subdivision adjacent to a street or thoroughfare. If the subdivision is not adjacent to a thoroughfare, the extension of utilities shall be accomplished in such a manner as to allow future connections to said utilities by new subdivisions. If new subdivisions will never be constructed beyond a developing subdivision due to physical constraints, the planning and zoning commission may waive the requirement for adjacent utility line construction at the time of preliminary plat approval and prior to construction of the subdivision.
- **18.2.4.** Installation, operations and maintenance of utilities not specifically referenced herein shall comply with regulations of the USFWS, TCEQ, Hays County, and the LCRA standards, and with any other applicable state rules and regulations, whichever is the most stringent requirement.
- **18.2.5.** For all new subdivisions that are intended to use on-site septic facilities (OSSFs), the applicant shall, prior to final plat approval, provide the following:
 - (a) A letter from the Hays County Environmental Health Department representing that the department has reviewed the proposed subdivision design.
 - (b) An approval by the city of a drawing that is representative of the intended layout of a typical lot within the proposed subdivision, specifically showing how the OSSF would be positioned on and how it would serve the lot. This drawing shall be reviewed by the city engineer prior to its approval or denial by the city.

18.3. - Stormwater systems.

- 18.3.1. System design requirements. Drainage improvements shall accommodate runoff from the upstream drainage area in its anticipated maximum "build-out" condition, and shall be designed to prevent overloading the capacity of the downstream drainage system. The city may require the phasing of development, the use of control methods such as retention or detention, or the construction of off-site drainage improvements in order to mitigate the impact of the proposed development. Any stormwater collection system constructed shall be designed in accordance with the city's ordinance by a licensed professional engineer, shall be reviewed and approved by the city engineer, and shall be in accordance with the City of Dripping Springs Flood Damage Prevention Ordinance, or the Hays County Flood Damage Prevention Ordinance, as applicable. All plans submitted to the city engineer for approval shall include a layout of the drainage system together with supporting calculations for the design of the system.
- **18.3.2.** All erosion and sedimentation controls shall conform to the ordinances.
- **18.3.3.** No person, individual, partnership, firm or corporation shall deepen, widen, fill, reclaim, reroute or change the course or location of any existing ditch, channel, stream or drainageway without first obtaining written permission of the city engineer and any other applicable agency (such as FEMA or the U.S. Army Corps of Engineers) having jurisdiction. The city engineer may, at his or her discretion, require preparation and

submission of a FEMA or flood study for a proposed development if there are concerns regarding storm dr *Item 6.* on the subject property or upstream or downstream from the subject property. The costs of such study, if required, shall be borne by the developer.

- 18.3.4. In order to help reduce stormwater runoff, and resulting erosion, sedimentation and conveyance of nonpoint source pollutants, the layout of the street network, lots and building sites shall, to the greatest extent possible, be sited and aligned along natural contour lines, and shall minimize the amount of cut and fill on slopes in order to minimize the amount of land area that is disturbed during construction.
- **18.3.5.** No cross-street flow (i.e., perpendicular to traffic flow) of stormwater runoff shall be permitted unless approved by the city engineer. When and if such drainage flow is allowed, it must be across a concrete street (i.e., valley gutter) and as approved by the city engineer.
- **18.3.6.** All stormwater retention or detention facilities shall be designed using materials and techniques as established in the city's TCSS Manual or as may be required by the city engineer.
- **18.3.7. Requirements.** An adequate storm sewer system consisting of inlets, pipes and other underground structures with approved outlets shall be constructed where runoff of stormwater and the prevention of erosion cannot be accomplished satisfactorily by surface drainage facilities. Areas subject to flood conditions or inadvertent stormwater retention, such as standing or pooling water, as established by the city engineer, will not be considered for development until adequate drainage has been provided.
- 18.3.8. Criteria. The criteria for use in designing storm sewers, culverts, bridges, drainage channels, and drainage facilities shall conform to section 3.10 [section 18.3.1] of this chapter. In no case shall drainage areas be diverted artificially to adjacent properties or across roadways. Stormwater drainage from one lot onto another shall not be allowed unless such does not pose any harm or inconvenience to the downstream property owner(s), unless specifically approved by the city engineer, and unless the necessary off-site drainage easement is procured on the affected property(s).
- **18.3.9. Proper function.** The developer shall ensure that all drainage improvements within public easements or rightsof-way are functioning properly prior to the expiration of the maintenance bond. The developer shall be responsible for removing any significant build-up of sediment or debris from drainage improvements, with the exception of back-lot and side-lot drainage swales, at the 11th month of the second year for the required twoyear maintenance bond for the applicable facilities. The city shall inspect the improvements to determine any maintenance or correction of deficiencies at the conclusion of this period.

18.4. - Reuse of effluent.

The city may enact programs to encourage or reward the reuse of effluent by individual property owners on residential tracts.

18.5. - Land for plat.

No final plat shall be approved for any subdivision within the city or its ETJ until the applicant has made adequate provision for a water system and a sanitary sewer system of sufficient capacity to adequately provide service to all tracts and lots, individually or collectively, within the area to be subdivided. The design and construction of the water system and of the sanitary sewer system to serve the subdivision shall be in conformance with the city's, water district's, and Hays County's master plans for water and wastewater facilities and with the ordinances, and shall be approved by the city engineer. Services for utilities shall be made available to the property line of each lot or unit in such a manner as will minimize *Item 6.* necessity for disturbing the street pavement and drainage structures when connections are made.

18.7. - Fire chief.

Fire protection shall be provided in accordance with this chapter, with the city's ordinance, and with any other city policy or ordinance pertaining to fire protection or suppression. The fire chief or fire marshall, as appropriate, shall have the authority to approve the locations and placement of all fire hydrants and fire lanes and the chief or marshall may, at the chief's or marshall's discretion, modify fire hydrant spacing or fire lane placement based upon special design or distance circumstances. All required fire lanes shall be shown as "fire lane easements" on the construction and final plats, along with the applicable fire lane language block. Vertical construction (i.e., any building construction above foundation/slab level) shall not commence until all required fire lanes are properly installed and accepted by the city, nor until all fire hydrants have been installed, inspected, tested and accepted by the city.

18.8. - Water district requirements.

Any requirements of publicly approved underground water districts shall also be incorporated into the water and/or wastewater system.

18.9. - Pollution abatement.

Subdivisions within the city limits of the city and its ETJ shall comply with the city's water quality protection ordinance. Nonpoint source pollution shall be abated through the employment of structure controls, the provision of open space for overland flow, and the utilization of best management practices (BMPs) with regard to the use of pesticides, herbicides, and fertilizers for both residential sites and commercial tracts.

SECTION 19. - PUBLIC SITES AND OPEN SPACES

19.1. - Areas for public use.

The applicant shall give consideration to suitable and adequate sites for schools, parks, playgrounds, and other areas for public use or service so as to conform with the recommendations contained in the city's comprehensive plan; park and open space plan; and other applicable plans. Any provision for schools, parks or other public facilities shall be indicated on the preliminary and final plat, and shall be subject to approval by planning and zoning commission.

19.2. - Protection of drainage and creek areas.

- 19.2.1. All creeks and drainage areas shall be preserved and protected in their natural condition wherever possible, unless significant storm drainage improvements are required by the city in these areas. All development adjacent to creeks and drainage areas shall be in accordance with the city's ordinances, and with any other city policies or ordinances related to aesthetics or public access or enjoyment of creeks and waterways.
- **19.2.2.** Floodway management area (FMA). The definitions for "floodway" and "floodway fringe" shall correspond to those set forth by the Federal Emergency Management Agency (FEMA). For purposes of the National Flood Insurance Program, the concept of a floodway is used as a tool to assist the local community in the aspect of floodplain management. Under this concept, the area of the 100-year flood is divided into a floodway and floodway fringe. The floodway is the channel of a stream plus any adjacent floodplain areas that must be kep

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free of encroachment in order that the 100-year flood may be carried without substantial increases in flood *Item 6.* heights as defined by FEMA. The area between the floodway and boundary of the 100-year flood is termed the floodway fringe. The floodway fringe area cannot be reclaimed (elevated, infilled) for development (for exceptions to this, refer to the flood damage prevention ordinance).

- **19.2.3.** For the purposes of this chapter, the floodway management area (FMA) will correspond to the floodway, as defined by FEMA, or as may be modified pursuant to a flood study that is approved by FEMA.
- **19.2.4. Areas where an FMA is required.** All drainage areas or regulated floodways as referenced on the applicable floodway and flood boundary map (flood insurance rate map, or FIRM) shall be included in the FMA. If FEMA does not specify a floodway zone in any of the creeks or their tributaries, it shall be the developer's responsibility to establish and identify the FMA. The determination shall be made by a licensed professional engineer and approved by the city engineer. Where improvements to a drainage area are required by other ordinances of the city for the purpose of safety or other reasons related to drainage, those ordinances shall also be observed. The FMA is intended to apply to a creek or channel which is to remain open or in its natural condition. The creek shall remain in its natural state unless improvements are permitted or required by the city due to the pending development of properties adjacent to or upstream of the required improvements.
- **19.2.5. Ownership and maintenance of the FMA.** The area determined to be the FMA shall be designated on both the preliminary plat and final plat. Approximate locations shall be shown on zoning change requests and accurate locations of the FMA shall be established on the preliminary plat and final plat prior to site construction. At the city's option, the FMA shall be protected by one of the following methods:
 - (a) Dedicated to the City of Dripping Springs; or
 - (b) Easement(s). Creeks or drainageways on tracts which have private maintenance provisions, other than singleor two-family platted lots, can be designated as the FMAs by an easement to the city on the preliminary plat (with the appropriate plat language, as required by the city). Subdivisions with platted single-family or twofamily lots may designate the FMA by easement provided there are adequate access and maintenance provisions (such as by a mandatory homeowners' association), but no lots or portions of lots may be platted in the easement portion required for access unless specifically allowed by the city engineer. The area designated as FMA may be identified by a tract number; or
 - (c) Certain recreational uses normally associated with or adjacent to flood-prone areas (no structures allowed in the FMA), such as golf courses or certain types of parks. The uses allowed shall be in conformance with the zoning ordinance and approved by the P&Z.

Prior to acceptance of any drainageway as an FMA by the city, the area shall be cleared of all debris and brush (except for mature trees) and placed in a maintainable state. Floodway management areas dedicated to the city shall be left in a natural state except those areas designated for active recreational purposes and unless storm drainage requirements do not permit this to occur.

19.2.6. Design criteria. The following design criteria shall be required for development adjacent to the FMA:

- (a) Adequate access shall be provided to and along the FMA for public and/or private maintenance. An unobstructed area a minimum of 20 feet wide with a maximum 5:1 slope (five feet horizontal to one foot vertical), the length of the floodway shall be provided adjacent to or within the FMA. On the opposite side of the drainage area, an unobstructed area having a minimum width of five feet shall be provided.
- (b) Lots or units in a single-family, or duplex residential zoning district shall not be platted within the FMA, and no more than ten percent of the linear length of the FMA (on each side) shall be allowed to have lots or units backing or siding onto it. If lots back or side onto an FMA, at least two reasonable points of access to the F

each a minimum of 20 feet in width, shall be provided. Streets, alleys and open-ended cul-de-sacs may as access points if designed such that they are navigable by maintenance vehicles (e.g., alleys must be 20-foot width). All areas of the FMA shall be accessible from the access points and shall be visible from access points. Lots used for multifamily dwellings may be platted in the FMA if the FMA is identified as an easement and is maintained as open space for use by the residents, and provided that access to the FMA is possible by city maintenance vehicles, should that need arise. If the FMA is to be public park land, then adequate public access and good public visibility shall also be provided to all portions of it.

- (c) Public or private streets may be approved in the FMA by the P&Z (if they conform to applicable engineering standards).
- (d) Linear public streets may be required to be constructed adjacent to some (or all) portions of the FMA to allow access for maintenance or recreational opportunities, and/or to allow increased visibility into creek areas for public safety and security purposes.
- (e) Alternate designs to facilitate equal or better access may be permitted if approved by the P&Z.
- **19.2.7.** Drainage areas which have been altered and are not in a natural condition can be exempted from an FMA and this section at the discretion of the P&Z.
- 19.3. Property owners', homeowners', or condominium associations.
 - **19.3.1.** Applicability. When a subdivision contains either common open space or other improvements which are not intended to be dedicated to the City of Dripping Springs for public use, such as private streets, a private recreation facility, landscaped entry features or other private amenities, a property owners', homeowners', or condominium association agreement consistent with state and other appropriate laws, must be submitted to and approved by the city administrator and the city attorney. The conditions, covenants and restrictions (CCRs) and the association documents, such as the articles of incorporation and association bylaws, shall be submitted to the city for review and approval along with the final plat application, and shall be filed of record at the county simultaneously with the final plat in order to ensure that there is an entity in place for long-term maintenance of these improvements. Said documents must, at a minimum, include provisions which allow the city, at its discretion, to take over the maintenance of common property, including but not limited to common elements, private streets and private recreation facilities, using association funds, if such action becomes necessary due to nonperformance or inaction by the association or if the association goes defunct. To the extent allowed by law, provisions shall also be included which would, in the latter instance, convey ownership of the private streets (if any) and all other common areas to the city, and which would allow the city to remove any improvements or amenities from the common areas and sell any buildable land area, as residential lots, to recoup the city's expenses for maintenance or demolition of the improvements. Any monies that remain after the city has recovered all of its expenses shall be retained for future maintenance or upgrading of the streets, common elements, common areas (if any remain), screening walls, or other improvements within the subdivision. These provisions are not intended to allow the city to profit in any way from taking over the association's responsibilities or funds; they are only intended to allow the city to recoup its actual incurred expenses such that the general public, the taxpayers of the city, does not have to bear these costs.
- 19.4. Park land and public facility dedication.
 - **19.4.1.** The applicant shall give consideration to suitable sites for parks, playgrounds and other areas, as required by the city, for public use so as to conform with the recommendations of the city's park and open space plan. Any provision for parks and public open space areas shall be indicated on the preliminary and final plat, and shall

subject to approval and acceptance by the planning and zoning commission.

- **19.4.2.** Applicants shall dedicate parkland, or render money in lieu of land donations, in accordance with the city's parkland dedication ordinance, volume 2, article 15, <u>chapter 17</u> [article <u>28.03</u>] of the city's Code of Ordinances, as may be amended.
- **19.4.3.** No individual, partnership, firm, or corporation shall deepen, widen, fill, reroute or change the course or location of any existing ditch, channel, stream or drainageway, without first obtaining written permission of the city and any other agency having jurisdiction.

SECTION 20. - IMPROVEMENTS FOR ACCEPTANCE

20.1. - General.

- **20.1.1.** The requirements as set forth below are designed and intended to ensure that, for all subdivisions of land within the scope of the subdivision ordinance, all improvements as required herein are installed properly and:
 - (a) The city can provide for the orderly and economical extension of public facilities and services;
 - (b) All parcels of land in the subdivision are useable for the intended purpose or are developable; and
 - (c) All required improvements are constructed in accordance with city standards.
- **20.1.2.** Adequate public facilities policy. The land to be divided or developed must be served adequately by essential public facilities and services. No subdivision shall be approved unless and until adequate public facilities exist or provision has been made for water facilities, wastewater facilities, drainage facilities, electricity and street facilities which are necessary to serve the development proposed, whether or not such facilities are to be located within the property being platted or off-site. This policy may be defined further and supplemented by other ordinances adopted by the city. Wherever the subject property adjoins undeveloped land, or wherever required by the city to serve the public good, utilities shall be extended to adjacent property lines to allow connection of these utilities by adjacent property owners when such adjacent property is platted and/or developed.
- **20.1.3.** Public improvements that are required by the City of Dripping Springs for the acceptance of the subdivision by the city shall include, but are not limited to, the following:
 - (a) Water and wastewater facilities;
 - (b) Stormwater drainage, collection and conveyance facilities;
 - (c) Water quality, erosion and sedimentation controls;
 - (d) Streets;
 - (e) Streetlights;
 - (f) Street signs;
 - (g) Sidewalks on both sides of the street in both residential and nonresidential developments utilizing curbs (not open ditches). Sidewalks shall be required in conjunction with sewer line installation. Sidewalks shall include barrier-free ramps at street intersections and other appropriate locations, as well as root barriers if necessary due to the close proximity of trees;
 - (h) Screening and/or retaining walls;
 - (i) Traffic-control devices or treatments required as part of the project; and
 - (j) Appurtenances to the above, and any other public facilities required as part of the proposed subdivision.
- 20.1.4. All aspects of the design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply with the city's current design and implementation of public improvements shall comply and implementation of public improvements shall complementation of public improvements shall complements shall complementation of public implementat

standards and any other applicable city codes and ordinances, including preparation and submittal of construction plans and construction inspection. The construction of all of the improvements required in this chapter shall conform to the latest edition of the city's ordinances, as may be amended, and to any other applicable city standards.

20.1.5. All public improvements required by this ordinance shall be completed or supported by complete fiscal security in accordance with approved construction plans prior to submission for final plat approval. A final plat shall not be filed until all improvements and/or fiscal security has been accepted.

SECTION 21. - MONUMENTS

21.1. - Placement.

In all subdivisions and additions, monuments shall be established at the corner of each block in the subdivision consisting of an iron rod or pipe not less than one-half-inch in diameter and 18 inches deep, and set flush with the top of the ground. Lot corner monuments shall be placed at all lot corners except corners which are also block corners, consisting of iron rods or pipes of a diameter of not less than one-half-inch and 18 inches deep, and set flush with the top of the ground. In addition, curve point markers shall be established of the same specifications as lot corners. Each block corner monument shall include a cap with the surveyor's name and registration number attached to it. All block corners shall be installed prior to the final review of the subdivision by the city. Lot corners shall be installed prior to issuance of a building permit.

21.2. - Minimum.

A subdivision shall have at least two concrete monuments set by the surveyor, if not already existing, for two corners of the subdivision, and such concrete monuments shall be located at opposite ends (or at widely separated corners) of the subdivision and clearly shown on the final plat prior to filing at the county. The final plat shall also show clear ties to existing concrete monuments in the vicinity of the subdivision.

SECTION 22. - STREETLIGHTS

22.1. - General.

All street lighting shall be in keeping with the "semi-rural" atmosphere of Dripping Springs, and shall be in conformance with the lighting (i.e., "dark sky" or illumination) ordinance and any other applicable city codes. Street lighting shall be of a design that casts light downward to the greatest extent possible, and shall minimize light overspill onto adjacent properties.

SECTION 23. - STREET NAMES AND SIGNS

23.1. - Approval of street names.

Street names must be submitted to Hays County for review and approval in accordance with the county's guidelines for the naming of streets. The county shall forward all proposed street names to others for review, including the U.S. Postal Service, the county, and any other applicable emergency service providers. Proposed street names shall be submitted for review along with (and as a part of) the preliminary plat application, and shall become fixed at the time of approval of the 345

preliminary plat. On the final plat, street names shall not be changed from those that were approved on the preliminal *Item 6.* plat unless special circumstances have caused the major realignment of streets or a proposed street name(s) is discovered to have already been used elsewhere in the city (or some other similar eventuality). If additional street names are needed for the final plat, then they must be submitted for review and approval by the city, and applicable emergency service providers, including 9-1-1 dispatch, along with the final plat application. A fee may be established by the city for the changing of street names after approval of the preliminary plat. The rules established in this section shall be in addition to any rules promulgated in the city's interlocal agreement with Hays County for 9-1-1 addressing services.

23.2. - Surnames.

Surnames of people or the names of corporations or businesses shall not be used as street names, unless approved by the planning and zoning commission. The city or county will maintain a list of existing street names (and "reserved" street names that have been approved on a preliminary plat), and will update the list as new streets are platted.

23.3. - New street names.

New street names shall not duplicate existing street names either literally or in a subtle manner (for example, Smith Street vs. Smythe Street; Oak Drive vs. Oak Place vs. Oak Court vs. Oak Circle; Cascade Drive vs. Cascading Drive); shall not be so similar as to cause confusion between names (for example, Lakeside Drive vs. Lake Side Drive vs. Lake Siding Drive); and shall not sound like existing street names when spoken (for example, Oak Drive vs. Doak Drive vs. Cloak Drive; Lantern Way vs. Land Tern Way).

23.4. - Existing streets.

New streets which extend existing streets shall bear the names of the existing streets. Streets crossing thoroughfares or other roadways shall bear the same name on both sides of the thoroughfare, wherever practical, unless otherwise approved by planning and zoning commission.

23.5. - Documentation.

The developer shall provide the city with documentation evidencing that the street signs were installed.

23.6. - Guidelines.

Street name signs shall be installed in accordance with the city's guidelines before issuance of a building permit for any structure on the streets approved within the subdivision.

SECTION 24. - STREET AND ALLEY IMPROVEMENTS

24.1. - Responsibility of developer.

All on-site, such as internal, streets and alleys shall be constructed by the developer at the developer's expense, unless otherwise allowed by this chapter. If the subdivision is adjacent to a planned or future or substandard street and derives access, whether direct or indirect, from said roadway, then the developer shall be required to design and construct a reasonable portion of the roadway as well as any required median openings and left turn lanes needed to serve his or her

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subdivision. The planning and zoning commission may, at its option, accept escrow funds in lieu of immediate roadwa construction if the subdivision derives principal access from another improved roadway and if delaying construction or improvement of the road will not harm or otherwise inconvenience neighboring property owners or the general public.

24.2. - Requirements.

All streets and alleys shall be constructed using the materials, products and procedures outlined in the specification of the city's ordinance.

24.3. - Minimum.

The minimum street and alley paving standards for which the construction shall be made by the developer are shown in the ordinance.

24.4. - Barrier-free ramps.

In addition to the above-mentioned minimum standards, barrier-free ramps for physically challenged persons shall be constructed at all street corners, driveway approaches, appropriate mid-block crosswalks, and in locations where accessible parking spaces are provided. All barrier-free ramps and other accessibility considerations shall comply with section 228 of the Highway Safety Act, as currently amended, and with the Americans with Disabilities Act (ADA), as amended.

24.5. - Signs and barricades.

All signs and barricades shall be in conformity with ADA standards, and with specifications for uniform traffic-control devices, as adopted by the city, by Hays County, by the Texas Department of Transportation, and by the Texas Department of Public Safety, as applicable.

24.6. - Driveway connections.

Approval is required prior to the installation of any driveway connecting to a public street. The city engineer shall approve all driveway cuts. The minimum distance, as measured from the edge or curb to the edge or curb of driveways, and not from the centerlines of the driveways, between driveway openings for multifamily and nonresidential developments shall be as set forth in the city's ordinances, unless otherwise approved by planning and zoning commission. Driveways shall not be within the transition or stacking portion of a right turn lane, and shall be no closer than 100 feet to an intersecting thoroughfare or arterial street, as measured from the intersecting street's end of curb radius, and no closer than 50 feet to an intersecting residential or collector street. Residential driveways shall not be allowed on a major roadway (over 60 feet in right-of-way width; "type 1" or "type 2" within the city's transportation plan).

24.7. - Existing on-site facilities.

When a proposed subdivision, whether residential or nonresidential, abuts on one or both sides of an existing substandard street, or on a planned or future road as shown on the transportation plan, being substandard according to the then existing current transportation plan, the developer shall be required to improve his or her reasonable share of the existing on-site facility as that term is defined herein, including appurtenant sidewalks, barrier-free ramps, screening and landscaping, median openings and/or left turn lanes (if a divided thoroughfare), storm drainage structures, water quality or erosion controls, and other utilities, to bring the same to city standards, or to replace it with a standard city street as determined by the traffic impact analysis, if required, at no cost to the city.

24.8. - Developer's share.

The developer's share of improvements to a substandard perimeter road shall be 14 feet of pavement (including curb, if any), which is approximately equivalent to half of a collector street width (i.e., two through traffic lanes), along the entire front footage of the subdivision, unless the traffic impact analysis, if required, indicates that some other pavement width is needed to achieve and maintain an acceptable level of service on the roadway. If the subdivision is to be located on both sides of the roadway, 14 feet of pavement shall be constructed by the developer on each side of the road along the entire front footage of the subdivision on each respective side of the road, unless the traffic impact analysis determines otherwise. Design and construction of the roadway shall be in accordance with the city's transportation plan (with respect to right-of-way width and general location), the ordinances, and with any other applicable city codes and ordinances. Depending upon the specific roadway in question, and upon the traffic impact analysis results, any oversizing above the 14-foot width shall be borne by the city, the county, the state or by some other entity. The city council may, at its option, accept escrow funds in lieu of immediate roadway construction if the subdivision derives principal access from another improved roadway and if delaying construction and improvement of the road will not harm or otherwise inconvenience neighboring property owners or the general public.

24.9. - Dead-ends.

Streets which dead-end at power lines or similar rights-of-way or easements, and which are intended for future extension across these rights-of-way or easements, shall be constructed in the right-of-way or easement for half the distance across the right-of-way or easement, and shall be further restricted as set forth in this chapter. As with any other dead-end street, a note shall be placed on the final plat clearly labeling the dead-end streets that will, at some point, be extended across the power line easement (or right-of-way), and signage shall be placed at the end of the constructed street stub, such as on the barricade, also stating that the street will be extended in the future. Signage size and lettering shall be large enough to be legible by a person with normal vision at a distance of 20 feet.

SECTION 25. - RETAINING WALL CRITERIA

25.1. - Requirements.

In general, the use of retaining walls shall be minimized, wherever possible, through minimal and balanced cut and fill on property. When property within or directly adjacent to a subdivision contains changes in elevation exceeding two and one-half feet and the slope exceeds one unit vertical to two units horizontal, a retaining wall shall be required at the locations specified herein prior to the acceptance of the subdivision:

Location A. The grade change roughly follows a side or rear lot line.

Location B. The grade change is adjacent to a proposed building site boundary.

Location C. The grade change is adjacent to a watercourse or drainage easement.

25.2. - Design and construction.

All retaining wall design and construction shall be in compliance with the provisions of the building code and the ordinances of the City of Dripping Springs, and shall be approved by the city engineer.

Retaining walls shall be maintained by the owner of the property whereon such retaining wall is located.

25.4. - Easements.

Retaining walls shall not be constructed within any portion of a public utility, drainage, or right-of-way easement, unless approved by the city engineer and properly permitted by the city.

SECTION 30. - REQUIREMENTS FOR ACCEPTANCE

30.1. - Withholding city services and improvements.

The city hereby defines its policy to be that the city will withhold all city services and improvements of whatsoever nature, including the maintenance of streets and the furnishing of all other city services from any subdivision or property until all of the street, utility, storm drainage and other public improvements, as well as lot or unit improvements such as retaining walls and grading and installation of improvements required for proper lot or unit drainage and prevention of soil erosion on the individual residential lots or units, are properly constructed according to the approved construction plans and to city standards, and until such public improvements are dedicated to and accepted by the city.

30.2. - Guarantee of public improvements.

- **30.2.1. Property owner's guarantee.** Before approving the final plat of a subdivision located all or partially within the city or its ETJ, the city council must be satisfied that all required public improvements have been (or soon will be) constructed in accordance with the approved construction plans and with the requirements of this chapter.
- **30.2.2.** Waiver. The city administrator may waive performance guarantees for subdivisions in the ETJ that are subject to county performance guarantees and are in compliance with the county regulations.
- **30.2.3. Improvement agreement and guarantee.** The city council may waive the requirement that the applicant complete and dedicate all public improvements prior to approval of the final plat, and may permit the property owner to enter into an improvement agreement by which the property owner contracts to complete all required public improvements no later than two years following the date upon which the final plat is approved. The city council may also require the property owner to complete or dedicate some of the required public improvements prior to approval of the final plat, and to enter into an improvement agreement for completion of the remainder of the required improvements during such two-year period. The improvement agreement shall contain such other terms and conditions as are agreed to by the property owner and the city.
- **30.2.4. Improvement agreement required for oversize reimbursement.** The city shall require an improvement agreement pertaining to any public improvement for which the developer shall request reimbursement from the city for oversize costs. The city council, as it deems appropriate, has the authority to authorize the approval of such agreement as meeting the requirements of the city, and the city shall not withhold approval as a means of avoiding compensation due under the terms of this chapter. The city administrator is authorized to sign an improvement agreement on behalf of the city.
- **30.2.5. Security.** Whenever the city permits an applicant to enter into an improvement agreement, it shall require the applicant to provide sufficient security, covering the completion of the public improvements. The security shall be in the form of cash escrow or, where authorized by the City, a performance bond or other security acceptable to the city council and the city attorney, as security for the promises contained in the improvement agreement.

Item 6.

Security shall be in an amount equal to 100 percent of the estimated cost of completion of the required pu *Item 6.* improvements and lot or unit improvements. The issuer of any surety bond shall be subject to the approval of the city administrator and the city attorney.

- **30.2.6. Performance bond.** If the city council authorizes the applicant to post a performance bond as security for its promises contained in the improvement agreement, the performance bond shall comply with the following requirements:
 - (a) All performance bonds must be in the forms acceptable to the city administrator and the city attorney;
 - (b) All performance bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published in Circular 570, as may be amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury;
 - (c) All performance bonds must be signed by an agent, and must be accompanied by a certified copy of the authority for him or her to act;
 - (d) All performance bonds shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue performance bonds for the limits and coverage required; and
 - (e) Approval of bonding company as per ratings of the Texas Department of Insurance, or a successor agency.
- **30.2.7. Bankruptcy or insolvency.** If the surety on any performance bond furnished by the applicant is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the State of Texas, or the surety ceases to meet the requirements listed in Circular 570, the developer shall, within 20 calendar days thereafter, substitute another performance bond and surety, both of which must be acceptable to the city.
- **30.2.8.** As portions of the public improvements are completed in accordance with the ordinances and the approved construction plans, the applicant may make written application to the city administrator to reduce the amount of the original security. If the city administrator is satisfied that such portion of the improvements has been completed in accordance with city standards, he or she may, but is not required to, cause the amount of the security to be reduced by such amount that he or she deems appropriate, so that the remaining amount of the security adequately insures the completion of the remaining public improvements.
- **30.2.9.** At the same time as acceptance by the city of all required public improvements, the applicant shall file a maintenance bond with the city for the full cost of the public improvement in a form approved by the city. The maintenance bond shall be security for the applicant's covenant to maintain the required public improvements and to warrant that the improvements are free from defects for two years thereafter. When the required security for maintenance and warranty is provided through the maintenance bond the city will release the entire amount of the developer's security.
- 30.3. Temporary improvements.
 - **30.3.1.** The applicant shall build and pay for all costs of temporary improvements required by the city, and shall maintain those temporary improvements for the period specified by the city. Prior to construction of any temporary facility or improvement, the applicant shall file with the city a separate improvement agreement and escrow in an appropriate amount for temporary facilities, which agreement and escrow shall ensure that the temporary facilities will be properly constructed, maintained and removed.
 - **30.3.2.** Any temporary public improvement (e.g., a temporary cul-de-sac, alley turnout, drainage swale, erosion control device, etc.) shall be placed within an easement established specifically for that purpose. The recording information of the instrument establishing the temporary easement shall be clearly shown on the final plat for

the subdivision prior to approval of the final plat. A temporary easement for a required public improvemer *Item 6.* not be abandoned without the city engineer's approval and without written consent by the city.

30.4. - Government units.

Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agents authorized to act in their behalf, agreeing to comply with the provisions of this section.

30.5. - Failure to complete improvements.

For plats for which no improvement agreement has been executed and no security has been posted, if the public improvements are not completed within the period specified by the city, the plat approvals shall be deemed to have expired. In those cases where an improvement agreement has been executed and security has been posted, and the required public improvements have not been installed within the terms of the agreement, the city may:

- (a) Declare the agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
- (b) Suspend final plat approval until the public improvements are completed, and may record a document to that effect for the purpose of public notice;
- (c) Obtain funds under the security and complete the public improvements itself or through a third party;
- (d) Assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision for which public improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete the public improvements on the property; or
- (e) Exercise any other rights or remedies available under the law.

30.6. - Acceptance of dedication offers.

Acceptance of formal offers for the dedication of streets, public areas, easements or parks shall be by authorization of the city administrator. The approval by the planning and zoning commission of a construction plans or final plat shall not, in and of itself, be deemed to constitute or imply the acceptance by the city of any street, public area, easement or park shown on the plat. The city may require the plat to be endorsed with appropriate notes to this effect.

30.7. - Maintenance and guarantee.

The property owner shall maintain all required public improvements for a period of two years following acceptance of the subdivision by the city, and shall also provide a two-year maintenance bond (warranty) that all public improvements will be free from defects for a period of two years following such acceptance by the city.

30.8. - Construction procedures.

- **30.8.1.** A site development permit is required from the city prior to beginning any site development related work in the city or its ETJ that affects erosion control, storm drainage, vegetation or tree removal, or a floodplain.
- **30.8.2. Pre-construction conference.** The city shall require that all general and site development contractors (e.g., excavation, utilities, roadways) participating in the construction meet with the city for a pre-construction conference to discuss the project prior to any grading, filling, excavation, clearing or removal of vegetation and

any trees that are larger than six-inch caliper; discussion shall also include the required construction traffic *Item 6.* All contractors shall be familiar with, and shall conform with, applicable provisions of the city's zoning ordinance as well as the city's building code.

- **30.8.3.** Conditions prior to authorization. Prior to authorizing release of a site development permit, the city engineer shall be satisfied that the following conditions have been met:
 - (a) The preliminary plat has been approved by the planning and zoning commission (and any conditions of such approval have been satisfied);
 - (b) All required engineering documents are completed and approved by the city engineer;
 - (c) All necessary off-site easements and dedications required for city-maintained facilities and not shown on the plat must be conveyed solely to the city, such as by filing of a separate instrument, with the proper signatures affixed. The original of the documents and the appropriate fees for filing the documents at the county (per Hays County requirements and the city's submission guidelines, as may be amended from time to time) shall be returned to the city secretary prior to approval and release of the construction plans by the city engineer;
 - (d) All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of release of the city engineer, and at least one set of these plans shall remain on the job site at all times;
 - (e) A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times must be submitted to the city;
 - (f) All applicable fees must be paid to the city; and
 - (g) All required approvals and permits have been obtained from all local, state, and federal entities/agencies.

30.9. - Nonpoint source pollution controls and tree protection.

All nonpoint source pollution controls, erosion controls, and tree protection measures and devices shall be in place, to the city engineer's satisfaction, prior to commencement of construction on any property.

30.10. - Review and acceptance of public improvements.

- **30.10.1. General procedure.** Construction observation and daily on-site representation shall be supervised and provided by the developer's engineer at the developer's expense. Construction shall be in accordance with the approved construction plans and the ordinances of the City of Dripping Springs (and other applicable codes and ordinances). Any change in design that is required during construction should be made by the licensed professional engineer whose seal and signature are shown on the plans. All revisions shall be reviewed and accepted by the city engineer. If the city engineer finds that any of the required public improvements which include but are not limited to streets, drainage, water improvements, wastewater improvements, electrical, natural gas, and communication improvements have not been constructed in accordance with the city's standards and ordinances, then the property owner shall be responsible for completing and correcting the deficiencies such that they are brought into conformance with the applicable standards.
- **30.10.2.** Prior to final acceptance of the required public improvements the applicant shall ensure the provision/completion of the following:
 - (a) A signed statement from the design engineer that the public improvements have been constructed in conformance with the construction drawings, contract documents, and specifications.
 - (b) Shop drawing submittals of all materials, structures, etc., with approvals by the design engineer.
 - (c) Laboratory and field testing reports certified by a geotechnical firm or the testing laboratory(s) that are

- involved with the project.
- (d) A certificate from the general contractor that all bills for materials, services, and subcontractors have been paid.
- (e) Site visit/construction representation daily (or otherwise) reports signed by the design engineer or an acceptable representative as approved by the City of Dripping Springs.
- (f) A listing of the elevation of at least four permanent benchmarks located at the project site.
- (g) A walk-through of the public improvements with City of Dripping Springs officials, during which a complete final "punch list" of any additional/incomplete items will be developed. Once the punch list has been completed, there shall be a final walk-through with City of Dripping Springs officials.
- (h) Submission of final written approvals of the completed infrastructure improvements by county, state, and local entities.
- 30.11. Letter of satisfactory completion.
 - **30.11.1.** The city will not deem required public improvements satisfactorily completed until the applicant's engineer or surveyor has certified to the city engineer, through submission of detailed sealed "as-built", or record, drawings of the property which indicate all public improvements and their locations, dimensions, materials and other information required by the city engineer, and until all required public improvements have been completed. The "as-builts" shall also include a complete set of sealed record drawings of the paving, drainage, water, sanitary sewer and other public improvements, showing that the layout of the lines and grades of all public improvements are in accordance with construction plans for the plat, and showing all changes made in the plans during construction, and containing on each sheet an "as-built" stamp bearing the signature and seal of the licensed professional engineer and the date. One reproducible drawing of the utility plan sheets containing the as-built information shall also be submitted. The engineer or surveyor shall also furnish the city with a copy of the approved final plat and the construction plans, if prepared on a computer-aided design and drafting (CADD) system, in such a digital format (on disk) that is compatible with the city engineer's CADD system. When such requirements have been met to the city engineer's satisfaction, the city administrator shall thereafter make a recommendation to the planning and zoning commission for consideration of satisfactory completion of the public improvements. Once the city council votes its approval of satisfactory completion, the city administrator shall issue the letter of satisfactory completion.
 - **30.11.2.** Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the city for use and maintenance. The city council may, at its option, accept dedication of a portion of the required public improvements if the remaining public improvements are not immediately required for health and safety reasons, and if the property owner has posted a performance bond or cash bond in the amount of 100 percent of the estimated cost of those remaining improvements for a length of time to be determined by the city council. If the remaining public improvements are greater than \$10,000.00 and are not completed within the determined length of time, the city will impose a penalty that equals ten percent of the performance bond or cash bond. The obligation to complete the improvements remains with the developer, and all future building permits or certificates of occupancy will be withheld until the improvements are complete. If the remaining public improvements are less than \$10,000.00, the developer shall pay the actual dollar amount. The length of time may be extended due to inclement weather or unforeseen delays by mutual agreement between the developer and the city.
 - **30.11.3.** Upon acceptance of the required public improvements, the city administrator shall submit a certificate to the developer stating that all required public improvements have been satisfactorily completed.

- **30.12.1.** The planning and zoning commission may, upon application of the property owner and favorable recommendation of the city engineer, defer at the time of plat approval, subject to appropriate conditions, the provision of any or all public improvements as, in its judgment, are not required in the immediate interests of the public health, safety and general welfare.
- **30.12.2.** Whenever an application to defer the construction of any public improvements required under this chapter is granted by the planning and zoning commission, the property owner shall deposit in escrow his or her share of the costs (in accordance with city participation and oversizing policies) of the future public improvements with the city prior to approval of the plat, or the property owner may execute a separate improvement agreement secured by a cash escrow guaranteeing completion of the deferred public improvements upon demand of the city.
- 30.13. Building permits and certificates of occupancy.

No building permit shall be issued for a lot, building site, building or use unless the lot or building site has been officially recorded by a final plat approved by the planning and zoning commission, and unless all public improvements, as required by this chapter for final plat approval, have been completed, except as may be permitted below:

- **30.13.1.** A building "foundation only" permit may be issued for a nonresidential or multifamily development provided that a preliminary plat has been approved by the planning and zoning commission, and provided that the construction plans have been released by the city engineer. However, the building permit shall not be issued and building construction shall not be allowed to surpass the construction of fire protection improvements. In other words, the building shall not proceed above the slab level until all required fire lanes have been completed, and until all water lines serving fire hydrants have been completed, inspected and tested.
- **30.13.2.** The city building official may release some residential building permits for not more than ten percent of the lots within a new residential subdivision, provided that a preliminary plat has been approved by the planning and zoning commission and the construction plans have been approved by the city engineer, and provided that all public improvements have been completed for that portion of the development including, but not limited to, those required for fire and emergency protection, such as streets providing at least two points of emergency access, alleys, water lines serving fire hydrants, and other similar, required public safety improvements. No lot may be sold nor title conveyed until the final plat has been approved by the planning and zoning commission and recorded at Hays County.
- **30.13.3.** No certificate of occupancy shall be issued for a building or the use of property unless all subdivision improvements have been completed and a final plat has been approved by the planning and zoning commission and recorded at the county. Notwithstanding the above, the city administrator may authorize the conditional or partial occupancy of a structure provided that an agreement providing cash escrow or other sufficient surety is approved by the city administrator for the completion of all remaining public improvements, and provided that the structure is safely habitable in accordance with the city's building codes.

SECTION 31. - FILING FEES AND PLAT RESUBMISSION

Fees and charges, as well as other submission requirements, for the submission of applications for the approval of type of plat and for engineering review and construction observation shall be as provided by separate ordinance, and may be amended from time to time. It is the applicant's responsibility to obtain and comply with the city's current fee schedule and submission requirements.

31.2. - Uniform applicability.

Such fees and charges shall be imposed and collected on all applications for approval of any type of plat, regardless of the action taken by the P&Z thereon. Such fees shall be collected for the purpose of defraying the costs of administrative, clerical, engineering, planning and review services necessary to properly review and investigate plats and subdivision construction. The cost incurred by the city to retain professionals to perform necessary development review, possibly including but not limited to, the city planner and city engineer, may be charged directly to the applicant for the actual cost of said professional services.

31.3. - Cessation of pending status.

Should a development proposal or plat application lapse or expire, or should it be denied by the P&Z, then that application ceases "pending" status and the project, and its corresponding series of development approvals and permits, shall be deemed to be ended, or "completed". Any reapplication for any type of development approval for that property shall be considered commencement of a new project, and shall be accompanied by new application materials, including new submission fees, and shall conform to all applicable city ordinances in effect at the time of submission of the new application.

31.4. - Other fees.

All required fees, unless specifically stated otherwise herein, shall be paid as required in other sections of this chapter. Final observation and review fees may be paid at the time the actual review (i.e., final "walk-through") of the project is undertaken.

SECTION 32. - ENFORCEMENT

32.1. - Prohibition.

No person shall violate the terms, conditions or regulations enacted in this chapter.

32.2. - Violations and penalties.

In addition to all other remedies and relief available to the city at law or in equity for a violation of this subdivision ordinance, the following nonexclusive forms of relief shall be available to the city:

- **32.2.1.** Violations and penalties. Any person who violates any of these regulations for lands within the jurisdiction of the city shall be subject to a fine of not more than \$500.00 per day, with each day constituting a separate offense, pursuant to the Texas Local Government Code, chapter 54, as amended. Each day constitutes a separate violation.
- **32.2.2.** Civil enforcement. Appropriate civil actions and proceedings may be maintained in law or in equity to prevent unlawful construction, to recover damages, to impose additional penalties, to restrain, correct or

abate a violation of these regulations, whether such violation occurs with respect to lands within the jurisdiction of the city. These remedies shall be in addition to the penalties described above. The city may recover a civil penalty not to exceed \$1,000.00 per day for violation of this chapter.

32.3. - Withholding of subdivision acceptance.

The city may refuse to grant final acceptance of a subdivision that does not fully and completely comply with all terms and conditions of this subdivision ordinance including, but not limited to, the refusal to issue building permits and certificates of occupancy, and the refusal to connect the property to city utilities and services.

32.4. - Withholding of other authorizations.

The city may refuse to grant development, construction, or occupancy approvals for improvements in a subdivision that does not fully and completely comply with all terms and conditions of this chapter. Without limiting the type or number of approvals the city may withhold, the city is specifically authorized to refuse to grant site development permits, building permits, utility connections, and certificates of occupancy.

(Ordinance 2019-29, adopted 9/10/19)

EXHIBIT B. - UNIFORM SUBMITTAL SCHEDULE-2020-2021

PLAT FILINGS

Submission for Administrative Completeness—Submit by:	Filing Date	Review Date
8/10/2020	8/24/2020	9/22/2020
9/14/2020	9/28/2020	10/27/2020
10/6/2020	10/20/2020	11/18/2020
11/3/2020	11/17/2020	12/16/2020
12/14/2020	12/28/2020	1/26/2021
1/11/2021	1/25/2021	2/23/2021
2/8/2021	2/22/2021	3/23/2021
3/15/2021	3/29/2021	4/27/2021
4/12/2021	4/26/2021	5/25/2021
5/10/2021	5/24/2021	6/22/2021

6/14/2021	6/28/2021	7/27/2021	Item 6.
7/12/2021	7/26/2021	8/24/2021	
8/16/2021	8/30/2021	9/28/2021	

RESPONSE TO DENIAL COMMENTS

Submission for Administrative Completeness—Submit by:	Filing Date for Resubmission Response to Comments	Review Date
8/24/2020	9/7/2020	9/22/2020
9/28/2020	10/12/2020	10/27/2020
10/20/2020	11/3/2020	11/18/2020
11/17/2020	12/1/2020	12/16/2020
12/28/2020	1/11/2021	1/26/2021
1/25/2021	2/8/2021	2/23/2021
2/22/2021	3/8/2021	3/23/2021
3/29/2021	4/12/2021	4/27/2021
4/26/2021	5/10/2021	5/25/2021
5/24/2021	6/7/2021	6/22/2021
6/28/2021	7/12/2021	7/27/2021
7/26/2021	8/9/2021	8/24/2021
8/30/2021	9/13/2021	9/28/2021

A plat application is considered filed on the date at which it has been deemed administratively complete.

An applicant may file comments in response to denial at any time, but the response will not be considered filed un *Item* 6. next resubmission date.

(Ordinance 2019-31, adopted 9/10/19; Ord. No. 2020-35, § 2, 7-14-2020)