AN ORDINANCE 96603

ADOPTING AN AGREEMENT BETWEEN THE CITY OF SAN AND LUMBERMEN'S INVESTMENT ANTONIO CORPORATION FOR SERVICES IN LIEU OF ANNEXATION CONCERNING THE LUMBERMEN'S PROPERTY IN BEXAR COUNTY, TEXAS, INCLUDING THE EXHIBITS TO THE WHICH INCLUDE **PROPERTY AGREEMENT** DESCRIPTIONS, MAPS, A DECLARATION OF RESTRICTIVE COVENANTS (WITH AN INCORPORATED GOLF COURSE **ENVIRONMENTAL MANAGEMENT** PLAN), FIREFIGHTING SERVICES AGREEMENT, A LANDOWNER'S CONSENT TO ANNEXATION AND A WAGE STANDARDS AGREEMENT. **AMONG** OTHER DOCUMENTS, AUTHORIZING THE EXECUTION OF **NECESSARY** DOCUMENTS TO IMPLEMENT THE AGREEMENT AND AMENDING THE THREE-YEAR ANNEXATION PLAN IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

* * * * *

WHEREAS, City Council has previously adopted a Three-Year Annexation Plan that provides for the annexation of the Lumbermen's tracts pursuant to the terms of Chapter 43, of the Texas Local Government Code as it was amended by SB 89 of the Seventy-Sixth Texas Legislature; and,

WHEREAS, the Three-Year Annexation Plan was in addition to then pending annexation procedures that would provide for the annexation of the property on or before December 31, 2002; and,

WHEREAS, the City of San Antonio issued notices as required by law and prepared an Inventory of Services and Draft Service Plan for the area; and,

WHEREAS, after objection by the owner to the terms of the plan, the Bexar County Commissioners Court appointed representatives of the property owner to negotiate the terms of an annexation services plan or, as an alternative, an Agreement for Services in Lieu of Annexation under the provisions of 43.0563, Texas Local Government Code; and,

WHEREAS, the owner's representatives and members of City staff have produced an agreement between the City of San Antonio and Lumbermen's Investment Corporation providing for certain services, the application of various San Antonio ordinances and which provides that the property will remain in the Extraterritorial Jurisdiction of the City of San Antonio for a period of fifteen years; and,

WHEREAS, upon termination or expiration of the agreement the property would be subject to annexation by the City of San Antonio on the terms set out in the agreement; and,

WHEREAS, the Agreement also provides for environmental management, monitoring and the provision of fire protection services to the property; and,

WHEREAS, the City Council finds that the terms and conditions of the Agreement for Services in Lieu of Annexation are in the best interest of the City of San Antonio; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. If an agreement can be executed substantially in accordance with the terms of the Agreement for Services In Lieu of Annexation which is attached hereto and incorporated herein and subject to the conditions set forth in Section 2, below, the City Manager or a designee is authorized to execute such an agreement without further City Council Action. This authority shall expire forty-five calendar days from the date of adoption of this ordinance if a final agreement has not been executed at such time.

SECTION 2. The authority to execute the final agreement is conditioned upon the prior execution of the Water Provision Agreement by representatives of the San Antonio Water System and the preparation and delivery to Council of a written report on any and all changes that have occurred in the preparation of the final Agreement for Services in Lieu of Annexation.

SECTION 3. The City agencies and departments noted within the Agreement in Lieu of Annexation and its exhibits are hereby authorized to perform the duties and responsibilities set out in the Agreement and its exhibits.

SECTION 4. The City of San Antonio Three Year Annexation Plan is hereby amended as necessary in accordance with this ordinance and the incorporated Agreement to reflect that the property will be annexed at the expiration or termination of the Agreement as provided by Section 43.0563, Texas Local Government Code.

SECTION 5. This ordinance shall be effective on November 3, 2002.

PASSED AND APPROVED this 24th Day of October, 2002.

MAYOF

EDWARD D. GARZA

APPROVED AS TO FORM:

City Attorney

	ALAMODOME
	ASSET MANAGEMENT
	AVIATION
	CITY ATTORNEY
	MUNICIPAL COURT
-	REAL ESTATE (FASSNIDGE)
	REAL ESTATE (WOOD)
	RISK MANAGEMENT
	CITY MANAGER
	SPECIAL PROJECTS
	CITY PUBLIC SERVICE – GENERAL MANAGER
	CITY PUBLIC SERVICE – MAPS AND RECORDS
	CODE COMPLIANCE
	COMMERCIAL RECORDER
	COMMUNITY INITIATIVES
	CONVENTION AND VISITORS BUREAU
	CONVENTION CENTER EXPANSION OFFICE
	CONVENTION FACILITIES
	COUNCIL OFFICES
	CULTURAL AFFAIRS
	CUSTOMER SERVICE/311 SYSTEM
	DEVELOPMENT SERVICES
	HOUSE NUMBERING
	LAND DEVELOPMENT SERVICES
	TRAFFIC & DRAINAGE PLAN REVIEW
	ECONOMIC DEVELOPMENT
	ENVIRONMENTAL SERVICES
	SOLID WASTE
	EXTERNAL RELATIONS
	PUBLIC INFORMATION OFFICE
	FINANCE - DIRECTOR
	FINANCE – ASSESSOR
	FINANCE - CONTROLLER
	FINANCE – GRANTS
	FINANCE – PUBLIC UTILITIES SUPERVISOR
	FINANCE- TREASURY
	FIRE DEPARTMENT
	HOUSING AND COMMUNITY DEVELOPMENT
-	HUMAN RESOURCES (PERSONNEL)
	INFORMATION SERVICES
-	
	INTERNAL REVIEW INTERNATIONAL AFFAIRS
-	
-	LIBRARY
-	MANAGEMENT & BUDGET (OFFICE OF) OMB
	MAYOR'S OFFICE
	METROPOLITAN HEALTH DISTRICT
	MUNICIPAL CODE CORPORATION
	MUNICIPAL COURT
	NEIGHBORHOOD ACTION
	PARKS AND RECREATION
	MARKET SQUARE
	YOUTH INITIATIVES
	PLANNING DEPARTMENT - NEIGHBORHOOD PLNG;
	URBAN DESIGN/HISTORIC PRESERVATION
	DISABILITY ACCESS OFFICE
	POLICE DEPARTMENT
	GROUND TRANSPORTATION
	PUBLIC WORKS DIRECTOR
	CAPITAL PROJECTS
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	ENGINEERING
	PARKING DIVISION
1	REAL ESTATE DIVISION
	TRAFFIC ENGINEERING
	PURCHASING AND GENERAL SERVICES
	SAN ANTONIO WATER SYSTEMS (SAWS)
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District 2			
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MOORHOUSE	-	/	
District 3			
ENRIQUE "KIKE" MARTIN		/	
District 4		1	1
DAVID A. GARCIA		/	
District 5		1	
ENRIQUE M. BARRERA	1	./	
District 6			
JULIAN CASTRO			X
District 7			
BONNIE CONNER		/	
District 8			
CARROLL W. SCHUBERT		/	
District 9			-
DAVID CARPENTER		/	
District 10			
EDWARD D. GARZA		/	
Mayor			

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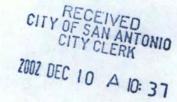
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	CODE COMPLIANCE
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	COMMERCIAL RECORDER
	COMMUNITY INITIATIVES
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TRAVEL AUTHORIZATION:	

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JOHN H. SANDERS District 2		1	
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ENRIQUE "KIKE" MARTIN District 4		1	
DAVID A. GARCIA District 5		1	
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AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

AMONG

CITY OF SAN ANTONIO, TEXAS

AND

JOHN PIERRET, CRAIG KNIGHT, CHUCK HUDSON, GARY McATEE, and BOBBY MANN, AS REPRESENTATIVES APPOINTED BY THE BEXAR COUNTY COMMISSIONERS COURT

AND

LUMBERMEN'S INVESTMENT CORPORATION

DATE: DECEMBER 9, 2002

CITY OF SAN ANTONIO

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		Form of Landowner's Consent to Annexation
		Form of Wage Standards Agreement

AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

This AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION is made and entered into, as of the Effective Date (herein defined), by and between:

CITY: CITY OF SAN ANTONIO, TEXAS, a municipal corporation;

REPRESENTATIVES: JOHN PIERRET, CRAIG KNIGHT, CHUCK HUDSON, GARY McATEE,

and BOBBY MANN (collectively in their capacity as appointed representatives

pursuant to Section 43.0562(b), Texas Local Government Code); and

DEVELOPER: LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation.

RECITALS

- A. Developer is the owner of the Land (herein defined) which is located within the City's ETJ. The Land consists of six tracts and there is one residential dwelling on Tract One (as described in **Exhibit "C"**) and no residential dwelling on any of the other five tracts.
- B. By Ordinance 96603, dated October 24, 2002, the City Council adopted a municipal annexation plan (the "Annexation Plan") in accordance with Section 43.052, et. seq., Texas Local Government Code, which covers the Land. Pursuant to such Annexation Plan, City issued written notice to each property owner of the Land as shown on the Bexar Appraisal District records, and to all public entities and private entities providing services to the Land.
- C. Based in part upon the responses to the written notices provided to the public and private entities providing services to the Land, City prepared an inventory of services and facilities which the City would be required to provide following annexation of the Land by City. Consistent with the inventory, City has prepared and made available to the public the Service Plan (as defined in the Landowners Consent to Annexation) for the provision of full municipal services to the Land, in accordance with Section 43.056, Texas Local Government Code. Further, in accordance with Section 43.0561, Texas Local Government Code, City has conducted two public hearings concerning the Service Plan at which persons interested in the Annexation Plan and Service Plan were given an opportunity to be heard.
- D. Pursuant to Section 43.0562(b), Texas Local Government Code, the Commissioners Court of Bexar County has appointed the Representatives for the purposes of negotiating for the provision of services to the Land upon annexation or for the provision of services to the Land in lieu of annexation, in accordance with Section 43.0563, Texas Local Government Code.
- E. City, Developer and Representatives have entered into this Agreement to evidence their agreement concerning the provision of services to the Land and the funding of services to the Land in lieu of annexation, to establish permissible land uses, to require compliance with certain municipal ordinances in lieu of annexation, and to consent to annexation of the Land upon the termination of this Agreement, as herein provided.
- F. The Land is located within the Edwards Aquifer Recharge Zone and/or the Edwards Aquifer Contributing Zone in northeastern Bexar County, Texas, and does or may have land forms which permit recharge to underground aquifers, including (without limitation) caves, sinkholes, solution cavities, faults and similar formations, and subject to the terms of this Agreement, Developer has agreed to land use restrictions, environmental management obligations and the application of certain municipal ordinances to the Land, as more fully set forth in the Declaration (herein defined).

- G. In addition to the specific authority given to City to enter into this Agreement by Chapter 43, Texas Local Government Code, City is entering into this Agreement pursuant to the authority given to City by Section 380.001, Texas Local Government Code, in order to promote economic development and stimulate business and commercial activity, and pursuant to the inherent authority of home rule municipalities to enter into agreements to defer annexation of land in consideration of benefits to be received by the municipality.
- H. The present and future benefits to be received by City by entering into this Agreement and deferring the annexation of the Land include (i) Developer's voluntary compliance with various City ordinances and regulations that would otherwise not be applicable to the Development; (ii) the development of the Land with less density and less impervious cover, and with more open space than legally required; (iii) the business and commercial activity and other economic development opportunities resulting from the Development; (iv) the development of the Land in an orderly manner to facilitate its future annexation in an appropriate and economical manner; (v) the expected increased future tax base when the Land is annexed; and (vi) Developer's consent to annexation by City upon termination of this Agreement pursuant to the Landowner's Consent to Annexation.
- I. In reliance on City's agreement not to annex the Land for the Term, pursuant to the terms of this Agreement, Developer has (i) agreed to substantially alter the manner in which it would otherwise develop the Land; (ii) agreed to voluntarily comply with various City ordinances and regulations and restrictive covenants that limit and restrict the manner in which the Land will be developed; (iii) agreed to reduce the density and impervious cover on the Land and provide a substantial amount of open space; (iv) agreed not to seek creation of a separate political subdivision for the Land; (v) agreed not to petition the formation of a public improvement district by City or County; (vi)agreed not to seek to use any portion of the Land for purposes authorized under the "Tax Increment Financing Act," Chapter 311, Texas Tax Code; and (vii) consented to voluntary annexation of the Land upon any termination of this Agreement unless such termination results from a default hereunder by City.
- J. In consideration of the agreements hereunder by Representatives and Developer and subject to the terms and conditions of this Agreement, City has agreed to continue the extraterritorial status of the Land and defer future annexation of the Land until December 30, 2017.
- NOW, THEREFORE, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning set forth below, unless the context in which such term or phrase is used clearly indicates otherwise:

"Agreement" means this Agreement.

"Annexation Plan" means as defined in the Recitals.

"City" means City of San Antonio, Texas, a home rule city under Article 11, Section 5, of the Texas Constitution and municipal corporation primarily situated in Bexar County, Texas.

"City Code" means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of City.

"City Council" means the City Council of City of San Antonio, Texas, or any successor governing body.

"City Representative" means the City Manager or her designated representative, with notice of such replacement given to Developer in accordance with this Agreement.

"City's Ordinance" means Ordinance No. 96603, authorizing this Agreement, adopted October 24, 2002.

"Completion of Construction" means as defined in the Declaration.

"Compliance Review Team" means, collectively, those individuals appointed by City's Independent Auditor and approved by the City Council to review the performance of the Parties and the compliance by the Parties with the terms, conditions and requirements of this Agreement and each exhibit hereto.

"Conservation Easement" means a conservation easement obtained by Developer pursuant to this Agreement which complies with the requirements of Article 6 hereof.

"Declaration" means the Declaration of Restrictive Covenants in the form attached hereto as Exhibit "A".

"Developer" means Lumbermen's Investment Corporation, a corporation organized under the laws of the State of Delaware.

"Developer Representative" means John K. Pierret or his replacement identified by Developer, with notice of such replacement given to City Representative in accordance with this Agreement.

"Development" means the high quality, master-planned community, with at least one full service, resort style hotel, residential housing, related commercial uses and up to two (2) or more eighteen (18) hole golf courses, which Developer has proposed for the Land.

"Development Plan" means the Cibolo Canyon Resort Community Master Development Plan/ Master Plan Community District master development plan approved by City in accordance with the UDC.

"ERZD" means the Edwards Aquifer Recharge Zone.

"Effective Date" means the date on which all Parties have signed this Agreement.

"ETJ" means the extraterritorial jurisdiction of City established pursuant to Chapter 212, Texas Local Government Code, as amended.

"Firefighting Services Agreement" means the Firefighting Services Agreement between City and Developer for the provision of fire protection for real property, including the Land, or portions of the Land and inhabitants thereof, in the form attached hereto as Exhibit "B".

"Golf Course Environmental Management Plan" means the Cibolo Canyon Golf Course Environmental Management Plan in the form attached to the Declaration as Exhibit "C" thereto, and as may be amended or supplemented from time to time in accordance with the terms thereof.

"Golf Course Tracts" means as defined in the Declaration.

"Governmental Authority" means any applicable federal, state, county or City governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Land or its inhabitants.

"Governmental Functions" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority.

"Governmental Rules" means any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

"Hotel" means the first "full service, resort style" hotel with approximately five hundred (500) guestrooms, to be built on the Land.

"Impervious Cover" means as defined in the Declaration.

"Land" means 2,597.6473 acres of land, more or less, consisting of six separate and distinct tracts, as described in Exhibit "C".

"Landowner" means, individually and collectively, each owner of any part of or interest in the Land (including, without limitation, a leasehold interest) other than a lien or security interest.

"Landowner's Consent to Annexation" means the Landowner's Consent to Annexation in the form attached hereto as Exhibit "D".

"Major Thoroughfare Plan" means the plan adopted by City Council September 21, 1978, as amended, which reflects proposed locations of major thoroughfares in the ETJ.

"OED" means the City's Office of Economic Development or such other functional division of City which may hereafter assume the performance of the functions of City's Office of Economic Development

"Official Records" means the Official Public Records of Real Property of Bexar County, Texas.

"Party" or "Parties" means a party or the parties to this Agreement, being City, the Representatives and Developer.

"PGA" means The Professional Golfers' Association of America.

"PGA Owner Entity" means either (i) a wholly owned subsidiary of PGA or (ii) an entity that directly or indirectly controls, is controlled by, or is under common control with PGA.

"Representatives" means the individuals named on page one of this Agreement, collectively, acting as the representatives appointed by the County's Commissioners Court.

"Restrictions" means the covenants and restrictions described in the Declaration.

"SAWS" means the San Antonio Water System, the City-owned purveyor of water and sewer services.

"Sewer Contract" means the "OSA Sewer Service Contract" dated February 29, 2000, between SAWS and Developer.

"State" means the State of Texas.

"Term" means a period of time commencing upon the Effective Date and ending on December 30, 2017.

"Termination Event" means those events described in Section 8.1, Section 8.2 and Section 8.3 of this Agreement which give rise to the automatic or optional termination of this Agreement.

"Unified Development Code" or "UDC" means Chapter 35, San Antonio Municipal Code, entitled the "Unified Development Code," adopted by City on May 3, 2001.

"Wage Standards Agreement" means the Wage Standards Agreement attached to this Agreement as Exhibit "E".

"Water Provision Agreement" means the Water Provision Agreement between SAWS and Developer related to the Golf Course Tracts.

"Water Service Agreement" means the Water Service Agreement For Lumbermen's Investment Corporation set forth in letter from SAWS to Pape-Dawson Engineers, Inc., concerning the Development.

ARTICLE 1. TERM; PRELIMINARY MATTERS

- 1.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect until the earlier to occur of (i) the expiration of the Term or (ii) the termination of the Agreement pursuant to a Termination Event. In the event this Agreement does not take effect due to termination pursuant to the provisions hereof or other event, or is terminated by mutual agreement of the Parties or other event, the Parties shall each promptly execute a document confirming the termination or lack of effect, as applicable, of this Agreement.
 - 1.2 Preliminary Matters. Not later than thirty (30) days following the Effective Date:
- 1.2.1 Execution of Documents. Developer and City shall execute, acknowledge and deliver to each other not less than triplicate counterpart originals of the Landowner's Consent to Annexation and the Wage Standards Agreement, each of which may be filed in the Official Records.
- 1.2.2 Filing of Declaration. Developer shall execute, acknowledge and cause to be filed in the Official Records, at Developer's expense, the Declaration.
- 1.2.3 Payment of Annual Monitoring Fee. Developer shall pay to SAWS the sum of \$100,000.00 as the initial annual monitoring fee pursuant to the Golf Course Environmental Management Plan.

ARTICLE 2. ANNEXATION

- 2.1 Deferred Annexation Period. City, subject to the conditions set forth in this Agreement, agrees to continue the extraterritorial status of the Land and its immunity from annexation by City until this Agreement has terminated.
- 2.2 Consent to Annexation. Developer consents to the annexation of the Land by City to occur at the end of the Term or upon termination hereof pursuant to a Termination Event, as more fully set forth in the Landowner's Consent to Annexation. During the Term, City may take all necessary steps to accomplish annexation of the Land upon the termination of this Agreement. Developer, for itself and future Landowners, agrees to execute any and all documents reasonably requested by City to evidence such consent.
- 2.3 Agreements to Survive. The provisions of Section 2.2 are and shall be construed as a separate agreement by the Parties and may be enforced separately and independently of this Agreement upon termination hereof.

ARTICLE 3. DEVELOPMENT

- 3.1 Reservation of Rights. The Developer shall retain such rights as described herein.
- City has approved the Development Plan. Developer intends to and may hereafter withdraw such Development Plan and submit for City's approval a successor master development plan which reflects the land uses substantially similar to those shown on the Development Plan. If this Agreement is terminated prior to the Completion of Construction of the Hotel, Developer may withdraw its filing of the Development Plan or any successor master development plan(s) and thereafter Developer's "Evans Road Tract Subdivision Preliminary Overall Area Development Plan NO. 452," accepted by City subject to the terms and conditions set forth in letter dated January 20, 1995, from David W. Pasley, Director of Planning, Department of Planning, City of San Antonio, to Rueben (sic) Cervantes, Pape-Dawson Engineers, will be deemed to be effective as if the Development Plan and any successor master development plan(s) had not been submitted for approval. City agrees that any such submittals shall not constitute a project alteration and, as such, any submittals shall not affect the vested rights, if any, attributable to the Land, except as provided in Subsection 3.1.2.
- 3.1.2 Vested Rights. Developer has agreed to abide by, comply with, observe and be governed by certain City ordinances and certain amendments to those ordinances as described in the Declaration. Developer does not waive, relinquish or release any existing permits or approvals it may have with respect to the Land, including but not limited to the rights evidenced by Vested Right Permit No. VRP-01-11-038 approved by City on December 7, 2001 (relating to the "Evans Road Tract Subdivision Preliminary Overall Area Development Plan No. 452, as referenced in Subsection 3.1.1), until Completion of Construction. Upon any termination of this Agreement prior to the Completion of Construction, Developer shall continue to have the benefit of any remaining unexpired permits and approvals that may still be applicable to the Land. Upon Completion of Construction, Developer does waive and release such rights to the extent such rights are inconsistent with the terms of this Agreement, including any exhibits to this Agreement, such waiver to survive any termination of this Agreement.
- 3.1.3 Amendments. By entering into this Agreement and agreeing to abide by, comply with, observe and be governed by certain City ordinances and the future amendments to those ordinances as described in the Declaration, Developer does not waive, relinquish or release the rights of Developer under Chapter 245, Texas Local Government Code, including the rights in Section 245.002 thereof relating to the uniformity of requirements, except to the limited extent expressly set forth in Article 1 of the Declaration and in Section 35-712 of the UDC.
- 3.2 Fire Protection Services by City. As authorized by Section 43.0563(c), Texas Local Government Code, City has agreed to provide fire protection services to the Land and its inhabitants in accordance with the Firefighting Services Agreement. Subject to execution thereof by Developer, and upon Developer's request, City shall execute and deliver to Developer the Firefighting Services Agreement.
- 3.3 Financing Agreements. So long as City complies with its agreement not to annex the Land, Developer agrees that it will not, without the prior written approval of City Council:
- (i) seek the creation any political subdivisions of any part of the Land with the power to tax or issue debt; except as permitted under Subsection 3.3(iii); City does not hereby consent to the creation of any political subdivisions of the Land or any part thereof except as permitted under Subsection 3.3(iii);
- (ii) enter into any agreement to induce creation of a tax increment financing zone pursuant to the "Tax Increment Financing Act," Chapter 311, Texas Tax Code, covering all or any part of the Land; or
- (iii) petition any Government Authority for the creation of a municipal public improvement district pursuant to *Chapter 372, Texas Local Government Code*, which includes all or any part of the Land.

- 3.4 Good Faith Effort Plan. Pertaining to Developer's activities relating to the Development, Developer shall in good faith comply with the following:
- 3.4.1 Non-Discrimination. Developer shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability.
- 3.4.2 Adherence to Advocacy Policy. Developer shall make a good faith effort to comply with the contracting goals for small, minority or woman-owned businesses, as set forth in the City's SBEDA program, in effect as of the Effective Date. A copy of such policy is available in the City Clerk's Office and in OED, in City's Office of Internal Review and in the Department of Human Resources.
- 3.4.3 Good Faith Effort Plan. Developer shall submit a "Good Faith Effort Plan" to City's Director of OED to describe Developer's compliance with Subsection 3.4.2 above. If the Director of OED determines that Developer's Good Faith Effort Plan does not comply with such Subsection 3.4.2, Developer will be required to submit a supplemental Good Faith Effort Plan to the Director of OED indicating Developer's efforts to resolve any identified deficiencies in the plan originally submitted by Developer.

ARTICLE 4. DEVELOPMENT OBLIGATIONS AND LIMITATIONS

- 4.1 Development Fees. Developer shall pay City all application, plan review, plat review, and filing fees applicable to the approval of subdivision plats in the ETJ and all fees (including, without limitation, impact fees, traffic impact analysis fees, water/wastewater impact fees, water supply fees, general benefit fees and stormwater management fees) assessed with respect to the Development at the times and in the amounts set forth in the UDC, this Agreement or under other agreements between Developer and City and/or SAWS related to the Development.
- 4.2 Amendment of Major Thoroughfare Plan. City agrees to support an amendment of the Major Thoroughfare Plan which deletes all roadways located on the Land which are reflected on the Major Thoroughfare Plan as being located north of the east-west arterial ("Cibolo Canyon Boulevard") and changes the classification of the north-south roadway south of Cibolo Canyon Boulevard from an arterial roadway to a connector roadway.
- 4.3 Moratoria on Building. City agrees that it will not impose or attempt to impose any moratoria on development or construction upon the Land or with respect to the Development, so long as such development or construction complies with this Agreement and the approved Development Plan and Developer is not in default hereunder or under the terms of the Declaration.
- 4.4 Quarterly Reports. Until Completion of Construction, Developer shall provide written reports to City Representative regarding the progress of the development of the Hotel and the PGA golf courses, but in no case shall such reports be required to be submitted more frequently than every ninety (90) days.

ARTICLE 5. WATER AND WASTEWATER

5.1 Water Services. The Land is in SAWS's certified water service area. SAWS is the exclusive purveyor of potable water services to the Land, pursuant to the SAWS Certificate of Convenience and Necessity No. 10640. In addition, SAWS shall be the exclusive purveyor of all other water services to the Land except to the extent that SAWS (i) may have insufficient water resources to comply with the Water Provision Agreement, or (ii) fails to provide water services in breach of the Water Provision Agreement. Developer and SAWS shall enter into the Water Service Agreement and Water Provision Agreement, pursuant to which SAWS will provide water service to the Land.

- 5.2 Sewer Contract. Public wastewater collection services shall be furnished by SAWS to the inhabitants of the Land in accordance with the Sewer Contract. SAWS is the exclusive purveyor of wastewater service to the Land pursuant to the SAWS Certificate of Convenience and Necessity No. 20285.
- 5.3 Water Conservation Measures. The Land shall be subject to the requirements imposed by the "Aquifer Management Plan Ordinance No. 80574," as set forth in the City Code, Chapter 34, Article IV, Divisions 1-4, Sections 287-350, inclusive, and known as the "Critical Period Management Rules," provided that, to the extent that the terms and conditions of the Water Provision Agreement may vary the Critical Period Management Rules or the application thereof with respect to the irrigation of the Golf Course Tracts and Golf Course Related Improvements (as defined in the Declaration), City approves such terms so long as Developer shall fully satisfy and perform the conditions set forth in the Water Provision Agreement. City also approves the rates, fees and charges imposed by SAWS under the terms of the Water Provision Agreement. This Section 5.3 will survive termination of this Agreement.

ARTICLE 6. CONSERVATION EASEMENTS

- 6.1 Developer's Obligation to Acquire Conservation Easements. Developer covenants and agrees to obtain Conservation Easements on not less than seven hundred (700) acres located in the ERZD or the Edwards Aquifer Recharge Contributing Zone, not later than the fifth (5th) anniversary date of this Agreement. The Conservation Easements shall be granted either to City, or to a non-profit, tax-exempt entity approved by City, at the sole option of City and shall comply with the following requirements and limitations:
- 6.1.1 No part of the Golf Course Tracts or Open Space Area (as defined in the Declaration) may be used to satisfy the acreage requirement under this Section 6.1.
- 6.1.2 Each tract of land covered by a Conservation Easement shall comprise at least sixty-five (65) acres unless such tract is contiguous to a Golf Course Tract, unless otherwise approved by City.
- 6.2 Permitted Uses for Lands Subject to Conservation Easements. The grantor and grantee of each Conservation Easement may utilize the land encumbered thereby for the following activities and uses:
 - **6.2.1** Natural habitat parks with indigenous wildlife, plants and ecosystems;
 - 6.2.2 Passive recreational uses, including nature trails;
 - 6.2.3 Drainage control facilities;
- 6.2.4 Measures to control invasive species of plant and animal life detrimental to the conservation values of the land subject to the Conservation Easement;
- 6.2.5 Construction of firebreaks and minimal roadways for ingress and egress for fire, emergency medical and police services;
 - **6.2.6** Removal of dead, diseased or non-native trees, shrubs or plants;
 - 6.2.7 Measures to monitor plant and wildlife populations, plant communities and natural habitats;
 - 6.2.8 Construction of perimeter fences and cross-fences as necessary to protect the land;
 - **6.2.9** Use, maintenance or improvement of any existing unpaved, internal ranch roads;

- 6.2.10 Use, repair, replacement and maintenance of water wells and transmission lines and related construction for use of water wells conveyed to SAWS under the Water Provision Agreement;
- 6.2.11 Construction and maintenance of electric power lines and any related substation(s) of City Public Service Board of San Antonio, the City-owned provider of electric and gas services (or its successors and assigns), including rights of ingress and egress related to such construction and maintenance; and
- 6.2.12 Uses reasonably necessary to comply with a permit issued by Texas Department of Parks and Wildlife; U.S. Fish and Wildlife Service; Texas Commission on Environmental Quality; U.S. Environmental Protection Agency; or their successors.
- 6.3 Prohibited Uses for Lands Subject to Conservation Easements. Each Conservation Easement will prohibit the following activities and uses of the land encumbered thereby, except to the extent undertaken in furtherance of a use permitted in Section 6.2 above:
 - 6.3.1 Placement or construction of Impervious Cover;
 - 6.3.2 Drilling, surface mining or other extraction of minerals by surface or subsurface methods;
 - 6.3.3 Commercial agricultural purposes of any kind;
- 6.3.4 Excavating, removal of topsoil, sand, gravel, rock, or other materials or changes in the topography;
- 6.3.5 Removal, harvesting, destruction or cutting of living native trees, plants or shrubs, planting of non-native trees, plants or shrubs, dumping or storage of any waste or other substances, including any deposits caused by erosion or siltation from adjacent property, or activities which are detrimental to wildlife habitat;
- 6.3.6 Use of insecticides, fungicides, rodenticides, herbicides or other biocides or pesticides, unless required for the protection of human health and safety; and
 - **6.3.7** Activities that are detrimental to drainage, flood control or soil conservation.

If any of the uses prohibited under the terms of a Conservation Easement later are deemed desirable by the mutual agreement of the grantor and grantee of such Conservation Easement, such uses and activities will be permitted to the extent authorized in writing by such parties, subject to Section 6.6 below.

- 6.4 Title to Property Subject to Conservation Easements. To be suitable land upon which a Conservation Easement may be placed, the land may not be subject to any encumbrances, restrictions or servitudes which could defeat the purposes for which the Conservation Easement was granted or which could result in the termination of such Conservation Easement due to events beyond the control of the holder of the Conservation Easement. Developer shall submit the following documents to City Representative for its review to determine the suitability of the title to each tract of land upon which a Conservation Easement is proposed:
- 6.4.1 A commitment for title insurance committing to insure title to the Conservation Easement in the holder thereof;
 - 6.4.2 legible copies of all documents referenced in such commitment for title insurance;
- 6.4.3 a current on-the-ground survey of the subject land reflecting the perimeter thereof and each encumbrance, easement or servitude affecting such land and all improvements or other structures thereon; and

6.4.4 legible copies of all unrecorded contracts, licenses, leases and agreements then in effect or currently existing but to be effective in the future, which affect the use, enjoyment, occupancy, possession, ownership or title to such land.

Unless City Representative has received and approved such documents (such approval not to be unreasonably withheld), the land (or such portion thereof identified by City Representative) proposed for the Conservation Easement will not be used in calculating the 700-acre requirement set forth in Section 6.1 hereof. If City Representative fails to notify Developer of any objection(s) within thirty (30) days of receipt of all of the documents required hereunder, City shall be deemed to have approved the submitted documents.

- Conservation Easement to City prior to acquiring such Conservation Easement. City shall review the Conservation Easement documents to ensure compliance with the purposes and intent of this Agreement. If (i) City reasonably determines that any term, condition, encumbrance or other matter set forth in such documents has or would have a material adverse effect on the title or uses of the land covered by such Conservation Easement and (ii) City Representative notifies Developer in writing of City's objection(s) to such documents, Developer shall cure such objection(s) to the reasonable satisfaction of the City. If City Representative fails to notify Developer of any objection(s) within thirty (30) days of receipt of all of the documents required hereunder, City shall be deemed to have approved the submitted documents. If Developer is unable to cure City's objections to such documents, the land covered by such Conservation Easement (or such portion thereof identified as being subject to City's objections) will not be used in calculating the 700-acre requirement set forth in Section 6.1 hereof.
- 6.6 Amendment or Assignment. If a Conservation Easement has been granted to a non-profit, tax-exempt entity approved by City, such entity may not permit any amendment, release or assignment of the Conservation Easement without the written approval of the City Council, and any purported amendment, release or assignment will be ineffective without such approval.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES; COVENANTS; INDEMNITY

- 7.1 Representations and Warranties of Developer. Developer hereby makes the following representations and warranties to City as of the Effective Date, unless another date is expressly stated to apply:
- 7.1.1 Existence. Developer is a corporation duly incorporated and legally existing under the laws of the State of Delaware, and qualified to transact business in the State.
- 7.1.2 Authorization. Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has provided to City, on or prior to the Effective Date, a certified copy of a resolution of its Board of Directors authorizing Developer's execution of this Agreement through Developer Representative, together with documents evidencing Developer's good standing and authority to transact business in the State. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.
- 7.1.3 Enforceable Obligations. Assuming due authorization, execution and delivery by all of the parties hereto and thereto where necessary, this Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder are enforceable against Developer in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

- 7.1.4 No Legal Bar. The execution and delivery of this Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder will not conflict with any provision of any law, regulation or Governmental Rules to which Developer is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Developer is a party or by which it is bound or any order or decree applicable to Developer.
- 7.1.5 Litigation. Except such matters which have been disclosed in writing to City or generally known by the public, there are no legal actions or proceedings pending or, to the knowledge of Developer Representative, threatened against Developer which, if adversely determined, would materially and adversely affect the ability of Developer to fulfill its obligations under this Agreement or the financial condition, business or prospects of Developer.
- 7.1.6 Documents. All documents made available by Developer to City and/or City's agents or representatives prior to the Effective Date, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.
- 7.1.7 Knowledge. Developer has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by Developer or by City under this Agreement are in any way inaccurate, incomplete or misleading.

7.2 Covenants of Developer. Developer covenants and agrees:

- 7.2.1 Golf Course Environmental Management Plan. The Golf Course Environmental Management Plan imposes requirements reasonably required and designed to protect surface and groundwater resources. Developer confirms that SAWS has and may exercise the powers of enforcement and authority described in the Golf Course Environmental Management Plan. Developer shall observe and perform, or cause to be observed and performed, each of the obligations and requirements of the Golf Course Environmental Management Plan with respect to any Golf Course Tract to the extent required by the Golf Course Environmental Management Plan and this Agreement.
- 7.2.2 Waiver of Subrogation. Developer waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by Developer in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be obtained and maintained by Developer under or pursuant to this Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of Developer or City to the face amount or coverage of such insurance policies.
- 7.2.3 Waiver of Consequential Damages. Developer waives all present and future claims for consequential damages against City arising from or related to this Agreement, except for any claim relating to City's affirmative actions which result in a material breach of this Agreement, including, but not limited to, City's annexation of the Land (or any part thereof) in violation of this Agreement or City's unauthorized imposition of moratoria on building. Such waiver shall survive any termination of this Agreement.
- 7.2.4 Release of Existing Claims. Developer hereby releases any and all presently existing claims of every kind or character which Developer has or may have under or pursuant to this Agreement or its subject matter, against City and its elected officials, members, agents, employees, officers, directors, shareholders and representatives, individually and collectively.
- 7.3 Representations and Warranties of City. City hereby makes the following representations and warranties to Developer as of the Effective Date unless another date is expressly stated to apply:

- 7.3.1 Existence. City is a municipal corporation and home rule city of the State principally situated in Bexar County.
- 7.3.2 Power and Authority. City has all requisite municipal corporate power and authority to enter into this Agreement and perform all of its obligations hereunder. The execution and performance by City of this Agreement has been duly authorized by City's Ordinance and, except for the additional approval of Developer, no consent or approval of any other person is required, including, without limitation, any Governmental Authority.
- 7.3.3 No Legal Bar. The execution and performance by City of this Agreement, all documents executed by City pursuant hereto, and all obligations of City hereunder and thereunder does not and will not violate any provisions of any contract, agreement, instrument or Governmental Rule to which City is a party or is subject.
- 7.3.4 Litigation. Except such matters which have been disclosed in writing to Developer or generally known by the public, there are no legal actions or proceedings pending known to City Representative which, if adversely determined, would materially and adversely affect the ability of City to fulfill its obligations under this Agreement.
- 7.3.5 Enforceable Obligations. Assuming due authorization, execution and delivery by all other parties hereto and thereto where necessary, this Agreement, all documents executed by City pursuant hereto and all obligations of City hereunder and thereunder are enforceable against City in accordance with their terms.

7.4 Covenants of City.

- 7.4.1 Waiver of Subrogation. With respect to any policies of insurance which City may obtain (without any obligation to obtain such policies of insurance), City waives any subrogation rights against Developer with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from any risks insured against under any valid collectible insurance contract or policy carried by City in force at the time of any such injury and/or damage giving rise to such claim. This waiver of subrogation is not intended to limit the claims of City to the face amount or coverage of such insurance policies.
- 7.4.2 Notice of Litigation. City shall deliver notice to Developer of any legal proceedings brought against City related to this Agreement. Such notice shall be delivered not later than fifteen (15) days after the earlier to occur of City's receipt of service of a claim or City's receipt of actual written notice of a claim, but in any event, prior to any settlement of such claim by City.
- 7.4.3 Confirmation of Compliance. If, to the actual knowledge of City Representative, no uncured event of Developer exists under the terms of this Agreement, City Representative shall confirm same in writing to Developer upon Developer's written request for such confirmation. Developer agrees not to submit such request more often than once during any sixty (60) day period during the Term of this Agreement.
- 7.5 Disclaimer of City. ANY CITY APPROVALS GRANTED PURSUANT TO THIS AGREEMENT DO NOT REFLECT ANY COMMITMENT, APPROVAL, REPRESENTATION, WARRANTY OR OBLIGATION WITH RESPECT TO THE SUFFICIENCY, ACCURACY, COMPLETENESS OR INTEGRITY OF ANY MATTERS SO APPROVED BY CITY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY CITY. DEVELOPER ACKNOWLEDGES THAT, EXCEPT FOR CITY'S REPRESENTATIONS CONTAINED WITHIN THIS AGREEMENT, NEITHER CITY NOR ANY AFFILIATE OF CITY NOR ANY RELATED PARTY OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE DEVELOPMENT, THE SUBJECT MATTER OF THIS AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESS OBLIGATIONS CONTAINED IN THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED BY THIS AGREEMENT. DEVELOPER AGREES THAT NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL HAVE ANY RESPONSIBILITY FOR (AND

HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING:

- 7.5.1 THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED OR AUTHORIZED FOR INCLUSION BY ANY PERSON OTHER THAN CITY'S REPRESENTATIVE UNDER THIS AGREEMENT;
- 7.5.2. THE COMPLIANCE OF THE DEVELOPMENT, THE DEVELOPMENT PLAN AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE; OR
- 7.5.3 THE ACCURACY OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, DEVELOPMENT SCHEDULES OR OTHER MATTERS RELATING TO THE DEVELOPMENT.

NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN CITY, CITY'S AFFILIATES OR RELATED PARTIES, INCLUDING, WITHOUT LIMITATION, SAWS) UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ANY DOCUMENT APPENDED AS AN EXHIBIT TO THIS AGREEMENT) TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY DEVELOPER (FOR ITSELF AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT DEVELOPER HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO THE LAND, THE DEVELOPMENT, AND THE DEVELOPMENT PLAN.

- 7.6 Reliance. Each Party recognizes and acknowledges that, in entering into this Agreement, (a) all Parties are expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each Party without any obligation to investigate the accuracy or completeness of such representations and covenants, and notwithstanding any investigation thereof by any Party, that such reliance exists on the part of each Party prior to the Effective Date and thereafter; (b) such representations and covenants are a material inducement to each Party in making this Agreement and agreeing to undertake and accept its terms, and (c) each Party would not be willing to do so in the absence of any of such representations and covenants, all of which shall survive the termination of this Agreement.
- Indemnification by Developer. EXCEPT AS DESCRIBED OTHERWISE HEREIN AND IN 7.7 SECTION 7.8, DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY (INDIVIDUALLY AND COLLECTIVELY, "INDEMNITEE") FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE, (COLLECTIVELY REFERRED TO AS "CLAIMS") MADE UPON INDEMNITEE DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES RELATED TO THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, DEVELOPER'S EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS. AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES (INDIVIDUALLY AND COLLECTIVELY, "DEVELOPER PARTY"). THE INDEMNITY PROVIDED FOR IN THIS SECTION 7.7 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE IN INSTANCES WHERE SUCH NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION. LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY

UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST AN INDEMNITEE KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES RELATED TO THIS AGREEMENT. DEVELOPER SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND, AT DEVELOPER'S EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION 7.7.

- 7.8 Exceptions to Indemnification by Developer. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 7.7, DEVELOPER SHALL NOT INDEMNIFY, DEFEND AND HOLD HARMLESS ANY INDEMNITEE FROM CLAIMS RESULTING FROM OR RELATED TO:
- 7.8.1 THE CIVIL ACTION NO. SA-02-CA-618-FB FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION OR ANY SUBSEQUENT ACTION ASSERTING THE SAME OR SIMILAR CLAIMS BASED ON THE SAME OR SIMILAR FACTS,
- 7.8.2 ANY CHALLENGE TO CITY'S AUTHORITY TO ENTER INTO OR PERFORM UNDER THIS AGREEMENT, OR
- 7.8.3 CITY'S NEGLIGENCE OR WILLFUL MISCONDUCT IN THE EXERCISE OF ITS GOVERNMENTAL FUNCTIONS.

ARTICLE 8. TERMINATION

- **8.1** Termination by Developer. Upon notice to City, Developer may terminate this Agreement at any time prior to the fifth (5th) anniversary of the Effective Date.
- 8.2 Termination Events Without Notice and Opportunity to Cure. City may terminate this Agreement without notice to Developer and without Developer having an opportunity to cure if:
- 8.2.1 PGA is not operating at least two (2) golf courses on the Land as of the fifth (5th) anniversary of the Effective Date; or
- **8.2.2** The Hotel is not in operation and open to the general public as of the fifth (5th) anniversary of the Effective Date.
- 8.3 Termination Events With Notice and Opportunity to Cure. Upon the occurrence of any of the following defaults of this Agreement, City shall give notice of such default to Developer in the manner required for notices under this Agreement:
- 8.3.1 Developer or any Representative has failed to execute this Agreement on or before December 30, 2002, or Developer has failed to execute, acknowledge and deliver to City the Wage Standards Agreement and the Landowner's Consent to Annexation within thirty (30) days following the Effective Date.
- **8.3.2** Developer has failed to execute, acknowledge and file for record the Declaration within thirty (30) days following the Effective Date.
- **8.3.3** Conservation Easements covering at least 700 acres have not been obtained in accordance with the requirements of this Agreement, as of the fifth (5th) anniversary of the Effective Date.

- 8.3.4 Prior to a permitted assignment under Subsection 10.2.2 hereof, a breach of the Golf Course Environmental Management Plan has occurred which authorizes City's termination of this Agreement, according to the terms of Section 7.1 of such Golf Course Environmental Management Plan.
- 8.3.5 Any failure to pay the sum of \$100,000.00 to SAWS annually during the term of this Agreement in accordance with this Agreement and the Golf Course Environmental Management Plan.
- **8.3.6** Developer's failure to file a Supplement (as defined in the Declaration) in the Official Records in accordance with the Declaration prior to Completion of Construction upon a tract to be used for Golf Course Permitted Uses (as defined in the Declaration).
- **8.3.7** A material breach by Developer of the Restrictions or Developer shall take legal action to oppose enforcement of the Restrictions by City or SAWS upon breach thereof by any third party.
- **8.3.8** An Event of Non-Compliance (as described in the Wage Standards Agreement) shall not be cured in accordance with the Wages Standards Agreement.
- **8.3.9** Developer shall seek to withdraw, rescind or nullify the Landowner's Consent to Annexation or to otherwise challenge the enforceability thereof by City, except to the extent permitted under such Landowner's Consent to Annexation.

City may terminate this Agreement if any such default under Section 8.3 is not cured to the reasonable satisfaction of City within thirty (30) days following the date of such notice. If such default cannot reasonably be cured within such 30-day period because of the nature of such default, Developer must initiate efforts to cure such default within such thirty (30) day period and diligently and continuously pursue its efforts to cure such default thereafter until such cure is accomplished, not to exceed a total of ninety (90) days. If such cure is not accomplished within said ninety (90) day period, City may terminate this Agreement by notice to Developer.

8.4. Effect of Termination of this Agreement.

- 8.4.1 If City exercises its right to terminate this Agreement pursuant to Section 8.2 or Section 8.3 hereof, or if Developer exercises its right to terminate this Agreement pursuant to Section 8.1, this Agreement shall terminate in all respects except as to those matters which survive termination as expressly stated in this Agreement.
- 8.4.2 In addition to the right to terminate this Agreement, pursuant to Section 8.2 or Section 8.3, City will have the right to pursue all other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. The exercise of any remedy by City will not be an election of remedies or preclude the exercise of any other remedy by City. The provisions hereof shall survive any termination of this Agreement.

8.5 Breach By City or Developer.

8.5.1 Notice of Breach and Cure Period. If either City or Developer fails or refuses to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Agreement (including any obligation, covenant or agreement set forth in any Exhibit to this Agreement), unless prevented by an unreasonable action of the other Party, such Party shall be in breach hereof. If a breach of this Agreement by Developer or City (other than a Termination Event) occurs and continues following thirty (30) days' written notice from City's Representative or from Developer's Representative, as applicable, of such breach, the non-defaulting Party (City or Developer, as applicable) will be entitled to exercise the remedies set forth herein; provided, however, that if such breach cannot reasonably be cured within such thirty (30) day period because of the nature of such breach, the defaulting Party must initiate efforts to cure such breach within such thirty (30) day period and diligently and continuously pursue its efforts to cure such breach thereafter until such breach is cured, not

to exceed a total of one hundred twenty (120) days. If such cure is not accomplished within said 120- day period, the non-defaulting Party (City or Developer, as applicable) may pursue the remedies set forth in Subsection 8.5.2 below. The provisions hereof shall survive and remain enforceable and binding upon the Parties following any termination of this Agreement.

8.5.2 Remedies. After expiration of any applicable cure period and delivery of any required notice, the non-defaulting Party (City or Developer, as applicable) may pursue, at its option, any and all remedies at law and/or in equity, including injunctive relief. No remedy stated herein is an exclusive remedy and pursuit of any remedy is not an election of remedies precluding the availability of any other remedy. No failure to exercise any remedy hereunder will effect a waiver of such remedy. The provisions hereof shall survive any termination of this Agreement.

ARTICLE 9. CAPACITY OF CITY

- 9.1 City Council Approval. Notwithstanding anything to the contrary set forth in this Agreement, Developer recognizes and agrees that any contracts or agreements contemplated to be entered into by City under the terms of this Agreement which are not attached as exhibits to this Agreement will be subject to the prior approval of the City Council, if the approval of the City Council is required under the terms of City's Charter or other applicable law.
- 9.2 Capacity of City. Without in any way limiting or exercising the obligation, duties, covenants and agreements of City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of City's required Governmental Functions shall not cause or constitute a default by City under this Agreement or any other document or give rise to any rights or claims for damages or injury against City in its capacity as a party to this Agreement. Developer's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against City as a charter city and governmental entity. The provisions hereof shall survive any termination of this Agreement.
- 9.3 Capacity of Parties Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to such persons or entities acting on behalf of City in its capacity as a Party to this Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of City's other Governmental Functions.
- 9.4 No Limitation on City's Governmental Functions. The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Agreement by City (as a Party to this Agreement) shall be binding upon, constitute a waiver by or estop City from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by City of this Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department or other approval required by City Code of San Antonio, Texas, or Governmental Rules.
- 9.5 Events Beyond City's Control. City shall have no liability to Developer in the event that this Agreement may be suspended, enjoined, terminated or nullified by the ruling by a court of competent jurisdiction or that court's finding that this Agreement is not enforceable by either Party or that any action or undertaking by City hereunder is beyond the authority conferred upon City by any Governmental Rules. This Section 9.5 shall be construed as a separate agreement by Developer and City and may be enforced separately and independently of the Agreement and is enforceable regardless of the effect, lack of effect, stay of effect or termination of the Agreement.

ARTICLE 10. MISCELLANEOUS

10.1 Beneficiaries. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns, including (without implied limitation) each Landowner.

10.2 Assignment.

- Parties shall not assign (partially or in the entirety) any obligations under this Agreement without prior written consent of the other Party, such consent to not be unreasonably withheld; provided, however, that, (i) all rights relating to the Land under this Agreement, including (without implied limitation) the right on non-annexation and moratoria on building, shall run with the Land during the development of the Land and any subsequent owner, mortgagee, lessee or other party with an interest therein shall enjoy such rights as described herein during the Term, and (ii) if Developer possesses or acquires any rights or entitlements with respect to the development of the Land and the construction of improvements thereon which run with all or a part the Land, any subsequent owner, mortgagee, lessee or other party with an interest therein shall automatically be a beneficiary of such rights and entitlements to the extent of such interest in the Land or portion thereof. Notwithstanding the foregoing, Developer may collaterally assign its rights and obligations hereunder to any Lender to which Developer has granted a lien encumbering all or part of the Land. Nothing contained herein shall be construed to conflict in any way with the provision set forth in Section 10.1.
- 10.2.2 Golf Course Environmental Management Plan. If Developer shall convey title to a Golf Course Tract to the PGA or a PGA Owner Entity, Developer shall also assign to such grantee Developer's obligations and agreements under the Golf Course Environmental Management Plan with respect to such Golf Course Tract. Upon such assignment, Developer shall be released from further liability thereunder with respect to such Golf Course Tract upon following conditions:
- (i) no default or breach shall then exist (or shall thereafter accrue based upon facts or circumstances which existed prior to such assignment by Developer) under the Golf Course Environmental Management Plan;
- (ii) if, prior to undertaking a conveyance to a PGA Owner Entity, Developer has provided written financial information to City Representative reflecting that the PGA Owner Entity possessed (or would possess upon such conveyance) the financial resources necessary to undertake and perform the financial obligations and agreements of Developer under the terms of the Golf Course Environmental Management Plan with respect to such Golf Course Tract, and City Representative did not object in writing to such written financial information within thirty (30) days following City Representative's receipt thereof; and
- (iii) the grantee shall assume in writing all of the obligations and agreements of Developer under the Golf Course Environmental Management Plan with respect to such Golf Course Tract, with an originally signed copy of such assumption agreement delivered to City.

Notwithstanding the foregoing, Developer and such grantee shall be jointly and severally liable for the obligation to pay \$100,000.00 annually to SAWS for administrative, review, monitoring and investigation costs, as described in the Golf Course Environmental Management Plan.

10.3 Notices. The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice

deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

CITY:

City of San Antonio

100 Military Plaza, 1st Floor San Antonio, Texas 78207

Attention:

Director of Development Services

With copies to:

City Clerk

100 Military Plaza, 2nd Floor San Antonio, Texas 78205, and

City Attorney

100 Military Plaza, 3rd Floor San Antonio, Texas 78205

DEVELOPER:

Lumbermen's Investment Corporation

5495 Beltline Road, Suite 225

Dallas, Texas 75240 Attention: Pre

President

With a copies to:

Lumbermen's Investment Corporation

1300 S. MoPac Expressway

Austin, Texas 78746

Attention:

General Counsel

Akin Gump Strauss Hauer & Feld LLP

300 Convent, Suite 1500 San Antonio, Texas 78205 Attention: M. Paul Martin

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

- 10.4 Business Days. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.
 - 10.5 Time. Time is of the essence in all things pertaining to the performance of this Agreement.
- 10.6 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Agreement will not be affected.
- 10.7 Waiver. Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such

Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

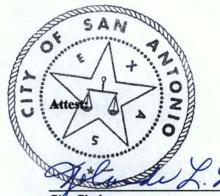
- 10.8 Reservation of Rights. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- 10.9 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Agreement.
- 10.10 Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.
- 10.11 Governing Law; Venue. THIS AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.
- 10.12 No Party Deemed Drafter. Each Party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.
- 10.13 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Agreement, exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.
- 10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.
- 10.15 Entire Agreement, Amendment, Survival. This Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of City, approved by action of City Council. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement and any termination hereof. Unless otherwise set forth in this Agreement, all agreements of the Parties contained in this Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Agreement to so survive.
- 10.16 Table of Contents; Headings. The table of contents and headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.
- 10.17 Notices of Changes in Fact. Promptly after either Party becomes aware of same, such Party will notify the other Party of (a) any change in any material fact or circumstance represented or warranted by such Party in this Agreement, and (b) any default, event or condition which, with notice or lapse of time or both, could become

a breach by such Party under this Agreement, specifying in each case, the nature thereof and what action such Party has taken, is taking and proposes to take with respect thereto. Such notice shall not delay or impede the exercise of remedy which City has under this Agreement or otherwise.

10.18 Compliance Review Team. Following reasonable notice and during normal business hours, the Parties agree to make available for review by the Compliance Review Team at the site where the same may be located during the normal course of business, such information as it may reasonably require, from time to time, for the purposes of (a) reviewing the performance of the Parties under this Agreement and each exhibit hereto and (b) confirming compliance of the Parties with the terms, conditions and requirements of this Agreement and each exhibit hereto. Any information which is not required by law to be made public may not be copied or disclosed by the Compliance Review Team, except as necessary to enforce the agreements and obligations of Parties under this Agreement. Notwithstanding the foregoing, no Party shall be required by the Compliance Review Team to create, prepare or generate data, reports or other compilations of information not required to be prepared or generated under other terms of this Agreement or of any exhibit hereto.

THEREFORE, IN WITNESS WHEREOF, City and Developer have executed this Agreement this day of December, 2002.

[signatures appear on following pages]



CITY OF SAN ANTONIO

Approved as to Form:

M. Martin, City Attorney

I, the undersigned, as an attorney employed by the City of San Antonio, Texas, for the purposes of negotiating and drafting the foregoing Agreement on behalf of the City of San Antonio, Texas, hereby certify that I have read, passed upon and approved as to form the foregoing Agreement and same reflects the terms approved by the City Council on October 24, 2002, as set forth in Ordinance 96603.

G. Wayne Choate

Goode Casseb Jones Riklin Choate & Watson, A Professional

Corporation

day of, 2002.	
	-CITY OF SAN ANTONIO
Attest:	
	Name:
City Clerk	
	Developer:
CORPORATION	LUMBERMEN'S INVESTMENT
CORTORATION	Sele Junt
	John Pierret, Executive Vice President
	Representatives:
	John Pierret June
	John Pierret
	Mu
	CHI .
	Craig Knight
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	Chuek Hudson
	1)
	Jan Matter
	Gary McAlec
	Ball Mar
_	Bobby Mann

EXHIBIT A

EXHIBIT A TO AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

DECLARATION OF RESTRICTIVE COVENANTS

This **DECLARATION OF RESTRICTIVE COVENANTS** (this "Declaration") is made by **LUMBERMEN'S INVESTMENT CORPORATION**, a Delaware corporation ("Declarant"), as of the Effective Date (herein defined).

RECITALS

- A. Declarant is the owner of an aggregate of approximately 2,855.7473 acres of real property in Bexar County, Texas, consisting of the Annexation Tracts (defined herein), and the Non-Contiguous Tract (defined herein and together with the Annexation Area, referred to herein as the "Land"), which are located within the exclusive extraterritorial jurisdiction of the City of San Antonio, Texas, a home rule city under Article 11, Section 5 of the Texas Constitution and municipal corporation primarily situated in Bexar County, Texas ("City").
- B. The Land is located within the Edwards Aquifer Recharge Zone and/or the Edwards Aquifer Contributing Zone in northeastern Bexar County, Texas, and does or may have landforms which permit recharge to underground aquifers, including (without limitation) caves, sinkholes, solution cavities, faults and similar formations.
- C. Declarant desires to develop the Land with a high quality, master-planned community; a full service, resort style hotel; single and multi-family residential housing; related commercial uses and two (2) or more golf courses.
- D. Pursuant to Section 43.0563, Texas Local Government Code, City, the five representatives appointed by the Bexar County Commissioners Court under Section 43.0562(b) and Declarant have entered into that certain Agreement For Services In Lieu of Annexation (the "Services Agreement"), pursuant to which City has agreed to the continuation of the extraterritorial status of the Annexation Tracts for a period of fifteen (15) years, subject to the terms of such Services Agreement.
- E. As a condition of the Services Agreement, City requires and Declarant has covenanted and agreed to restrict the Land, and such divisions, subdivisions and phases thereof, by and with the covenants and restrictions described herein and to the extent herein provided (collectively, the "Restrictions") and to grant, dedicate and/or convey the easements herein described.
- F. In order to effectuate the Restrictions, Declarant has agreed to execute and to be bound by and to comply with this Declaration.
- G. Pursuant to the Services Agreement, this Declaration is to be fully effective from and after the Effective Date.
- H. This Declaration terminates and extinguishes that Declaration of Restrictive Covenants dated May 20, 2002, executed by Declarant, and filed in the Official Records in Volume 9395, Page 368.
- NOW, THEREFORE, Declarant does hereby declare that each portion of the Land shall be owned, held, mortgaged, transferred, sold, conveyed, occupied and enjoyed subject to those Restrictions and easements expressly made applicable to such portion of the Land pursuant to this Declaration, which Restrictions and easements shall run with such Land, shall be binding upon Declarant and all parties having right, title, or interest in or to the Land or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. Each contract or deed conveying the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the Restrictions and easements made applicable thereto in accordance with this Declaration, regardless of whether or not the same are set out in full or by reference in said contract or deed, from and after the Effective Date.

Definitions

For purposes hereof, the following terms shall be defined as set forth below:

"Above Ground Storage Tank System" means a non-vehicular device (including any associated piping) that is made of non-earthen materials, located on or above the ground surface, and containing an accumulation of static hydrocarbons or hazardous substances, but excluding containers, less than two gallons in size, of gasoline, oil or household products used for normal household uses, which are not otherwise prohibited under applicable Governmental Rules.

"Annexation Tracts" means the six separate tracts of land as described on Exhibit A-1.

"City" means as defined in the Recitals.

"Completion of Construction" means the date on which Bexar County has issued a final certificate of compliance to the owner of the Hotel (as defined in the Services Agreement) inspected pursuant to Section 233.064, Local Government Code, evidencing the inspector's determination that the completed building complies with Bexar County's fire code.

"Declarant" means Lumbermen's Investment Corporation, a corporation organized under the laws of the State of Delaware, and its successors and permitted assigns.

"Declaration" means as defined in the Recitals of this Declaration.

"ERZD" means the Edward Aquifer Recharge Zone.

"Effective Date" means the date on which this Declaration is filed in the Official Records.

"Enforcing Authorities" means, individually and collectively, Declarant, City, SAWS and their respective successors and assigns.

"ETJ" means the extraterritorial jurisdiction of City established pursuant to Chapter 212, Texas Local Government Code, as amended.

"GAC" means the Geologic Assessment Team which consists of (i) a geologist selected by Declarant, (ii) a geologist selected by SAWS, and (iii) a geologist selected by City Council.

"General Monitoring Easement" means the right of ingress and egress across, over and under the Land in favor of each of the Enforcing Authorities for all activities necessary to undertake, from time to time, evaluation and monitoring of surface water and groundwater quality in accordance with the Golf Course Environmental Management Plan.

"Geologic Map" means the site geologic map of the Land prepared by the GAC and filed with the City Clerk of City, as amended from time to time by SAWS in accordance with this Declaration.

"Golf Course Environmental Management Plan" means the "Cibolo Canyon Golf Course Environmental Management Plan" attached to this Declaration as Exhibit "B", as same may be amended or supplemented from time to time in accordance with the terms thereof.

"Golf Course Permitted Uses" means the construction, operation, and maintenance of an eighteen (18) hole or executive golf course, rest areas, pedestrian paths, golf cart paths, utilities and utility access, driving ranges, and related uses and facilities, but excluding all Golf Course Related Improvements.

"Golf Course Tracts" means those portions of the Land hereafter identified and described in any Supplement as "Golf Course Tracts."

"Golf Course Related Improvements" means, collectively, those improvements related to the operation of a golf course, including (without implied limitation) clubhouses, golf learning or teaching facilities, pro shops, vending or snack facilities, maintenance facilities and areas, golf cart repair and parking areas.

"Governmental Authority" means any applicable federal, state, county or municipal governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Land or its inhabitants.

"Governmental Rules" means any statute, law, treaty, rule, code, ordinance, regulation or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

"Impervious Cover" means roads, parking areas, buildings, pools, patios, sheds, driveways, private sidewalks, and other impermeable construction covering the natural land surface; this shall include, but not be limited to, all streets and pavement on the Land.

"Land" means, collectively, the Annexation Tracts and the Non-Contiguous Tract.

"Landowner" means, individually and collectively, Declarant and each other owner of any part of or interest in the Land (including, without limitation, a leasehold interest) other than a lien or security interest.

"Non-Contiguous Tract" means the tract of land as described on Exhibit A-2.

"Non-Golf Course Land" means all portions of the Land other than the Golf Course Tracts.

"Official Records" means the Official Public Records of Real Property of Bexar County, Texas.

"Open Space Area" means a land or water area which has been restricted pursuant to Article 3 of this Declaration to permit human use and enjoyment thereof but to remain relatively free of man-made structures.

"Regulated Activity" means as defined in the TCEQ Development Rules.

"Restrictions" means as defined in the Recitals of this Declaration.

"SAWS" means San Antonio Water System, the City-owned water and sewer utility or its designated representative.

"Sensitive Feature" means as defined in Title 30, Section 213.3(27), Texas Administrative Code, as amended.

"Services Agreement" means as defined in the Recitals of this Declaration.

"Specific Monitoring Easement" means the right of ingress and egress across, over and under those portions of the Land specifically identified and described by Declarant, in favor of each of the Enforcing Authorities for the purposes of monitoring compliance with the applicable Restrictions and/or for all activities necessary to undertaken, from time to time, evaluation and monitoring of surface water and groundwater quality in accordance with the Golf Course Environmental Management Plan, in lieu of the General Monitoring Easement.

"Supplement" means a Supplement to Declaration of Restrictive Covenants in the form attached to this Declaration as Exhibit "C", executed and filed in the Official Records in accordance with Article 3 of this Declaration.

"TCEQ" means the Texas Commission on Environmental Quality, formerly the Texas Natural Resource Conservation Commission, and its successors.

"TCEQ Development Rules" means Title 30, Section 213.1, et. seq., Texas Administrative Code.

"Tree Preservation Ordinance" means Section 35-523 of the UDC as adopted by City on May 3, 2001.

"Underground Storage Tank System" means any one or combination of underground tanks and any connecting underground pipes, containing one or more hydrocarbons or hazardous substances, the volume of which, including the volume of the connecting underground pipes, is ten percent (10%) or more beneath the surface of the ground.

"WPAP" means a water pollution abatement plan and other "Edwards Aquifer Protection Plan" documentation (as described in the TCEQ Development Rules) which must be submitted for approval in accordance therewith.

"UDC" means Chapter 35, San Antonio Municipal Code, entitled the "Unified Development Code," as adopted by City on May 3, 2001.

Article 1. General Restrictions

The Land shall be and is hereby encumbered by this Declaration and the following covenants and restrictions:

- 1.1 Application of City Codes. Subject to Subsection 1.1.4 and the development rights described therein, the Land shall be subject to, and each Landowner shall abide by, comply with, observe and be governed by:
- as if the Land were located within the municipal boundaries of City, including without limitation the land use prohibitions applicable to the ERZD (Tables 311-1 and 311-2) and the Tree Preservation Ordinance (Section 35-523), but excluding those provisions of Chapter 35, Article III, San Antonio Municipal Code entitled "Zoning" which are not otherwise applicable to land in the ERZD.
- 1.1.2 Aquifer Protection Ordinances of City of San Antonio. Without limiting the generality of Subsection 1.1.1 hereof, all provisions and requirements of City's ordinances regarding drainage, flood plain regulation and aquifer protection, including (without implied limitation):
 - 1.1.2.1 Aquifer Protection Ordinance No. 81491, reflected in the San Antonio City Code, Chapter 34, Article VI, Division 6, Sections 901 999, inclusive;
 - 1.1.2.2 Underground Storage Tank Ban on the Edwards Recharge Zone Ordinance Nos. 74981, 81147 and 82935, reflected in the San Antonio City Code, Chapter 35, Article 3, Division 6, Subdivision A, Section 35-3106;
 - 1.1.2.3 Underground Storage Tank Management Program Ordinance No. 83200, reflected in the San Antonio City Code, Section 34, Article VI, Division 7, Sections 1000 -1100, inclusive;
 - 1.1.2.4 Construction Site Ordinance No. 94002, reflected in the San Antonio City Code, Section 34, Article VI, Division 4, Subdivision B, Sections 801 - 900, inclusive;
 - 1.1.2.5 Aquifer Management Plan Ordinance No. 80574, reflected in the San Antonio City Code, Chapter 34, Article IV, Divisions 1-4, Sections 287 350, inclusive, sometimes known as the 'Critical Period Management Rules,' except in its application as set forth in Section 3.5 hereof (with reference to the Golf Course Environmental Management Plan) as such ordinance relates to the Golf Course Tracts and Golf Course Related Improvements.
 - 1.1.2.6 Water Waste Enforcement Ordinance No. 92179, reflected in the City Code of San Antonio as Sections 34-287 through 34-315, inclusive;

- 1.1.2.7 Water Quality Control and Pollution Prevention Ordinance No. 80574, reflected in the San Antonio City Code, Chapter 34, Article VI, Sections 551-712, inclusive.
- 1.1.3 Geographic Application of Aquifer Protection Ordinances. Notwithstanding that certain provisions set forth in the ordinances described in Subsections 1.1.2.1 through 1.1.2.7 (inclusive) limit the application of such ordinances to lands located within the municipal boundaries of City or within a specified distance outside the municipal boundaries of City, all such ordinances shall apply to the Land and all Landowners. By acquiring title to or possession of any part of the Land or any interest therein, each Landowner (including, without limitation, Declarant) confirms the authority of City and/or SAWS to implement and enforce such ordinances, to exercise the rights and powers conferred by such ordinances, and to levy and impose the civil and other penalties authorized by such ordinances.
- 1.1.4 Amendments to Ordinances. The Land and all Landowners will be subject to future amendments and supplementations to the UDC except those amendments or supplementations which conflict with the terms of this Declaration, including, but not limited to Subsection 1.1.1 or which would be inapplicable to the development of the Land under Chapter 245, Texas Government Code or Section 35-712 of the UDC.
- 1.2 WPAP Required For Any Regulated Activity. These Restrictions are intended to supplement the requirements imposed pursuant to the TCEQ Development Rules. A WPAP required to be submitted pursuant to the TCEQ Development Rules must also be submitted and approved in writing or deemed approved by SAWS in accordance with this Declaration before the Regulated Activity may be undertaken on any part of the Land. Notwithstanding the above, any WPAP applicable to the Land and approved prior to October 24, 2002, shall not be subject to this Section 1.2.
 - 1.2.1 Procedure. The applicant shall submit a complete WPAP to SAWS.
- 1.2.2 Contents. Each WPAP will include the documentation and information required by the TCEQ Development Rules. In addition, each WPAP will include a calculation of Impervious Cover on the Land. The calculation of Impervious Cover will be made in accordance with the formula set forth in this Article 1 and will be expressed as a percentage of the total area of the Land.
- 1.2.3 Review Standards. The Director of Resource Protection and Compliance of SAWS (or such person or persons who may hereafter perform the duties of such office) will review each submitted WPAP to determine compliance with (1) TCEQ Development Rules, (2) the Golf Course Environmental Management Plan (to the extent such WPAP covers the Golf Course Tracts), and (3) this Declaration.
- 1.2.4 Deemed Approval by SAWS. A WPAP will be deemed approved by SAWS if SAWS has not rejected the submitted WPAP by written notice to the WPAP applicant on or before the forty-fifth (45th) day following the date on which a complete WPAP has been submitted to SAWS. Such notice of rejection of a submitted WPAP will identify any deficiency in the WPAP. A rejected WPAP will not preclude the subsequent submission of a revised WPAP for the same Regulated Activity.
- 1.3 Impervious Cover. The area of all Impervious Cover on the Land shall not exceed twenty-five percent (25%) of total area of the Land, as calculated in accordance herewith. The percentage of Impervious Cover will be determined by dividing
- 1.3.1 the sum of (i) the area of all Impervious Cover described in each approved WPAP which has not been withdrawn or canceled following approval, and (ii) the area of the Impervious Cover described in the submitted WPAP (as stated therein), by

1.3.2. the total area of the Land.

SAWS's approval of a WPAP shall evidence that the Impervious Cover described in such approved WPAP complies with the twenty-five percent (25%) limitation on the area of Impervious Cover set forth herein, subject to a field audit by SAWS to determine that the area of Impervious Cover actually placed on the Land does not exceed the calculated area of Impervious Cover described in the approved WPAP(s). A field audit may be conducted, if deemed necessary

by SAWS, in the exercise of its discretion, or if directed by City; provided, however, that such field audit shall be conducted, if at all, not later than six (6) months after all improvements under the approved WPAP have been fully completed. If the Impervious Cover actually placed on the Land differs from the calculation of Impervious Cover described in the approved WPAP, such difference shall be taken into account in future calculations of Impervious Cover pursuant to Section 1.3. If SAWS determines that the total of all Impervious Cover has reached or exceeded the twenty-five percent (25%) Impervious Cover limitation set forth in this Declaration, then additional Impervious Cover on the Land shall be strictly prohibited.

- 1.4. Sensitive Features. Sensitive Features known to exist on the Land at the time of the execution of this Declaration, as well as areas identified for additional study and determination, are shown on the Geologic Map. The following requirements are intended to supplement the requirements imposed pursuant to the TCEQ Development Rules.
- 1.4.1 Buffering. All Sensitive Features shown on the Geologic Map and those additional Sensitive Features discovered upon further study of the Land or during development of the Land shall be buffered or otherwise protected by measures determined by SAWS to be appropriate under the attendant circumstances of such feature.
- 1.4.2 Discovery During Construction. If a potential Sensitive Feature is detected on the Land during development, construction or otherwise, all related construction activities which could adversely impact of affect such potential Sensitive Feature shall cease until the Landowner or the Landowner's contractor has notified the SAWS Resource Protection and Compliance Department Director. If SAWS and Declarant do not agree as to whether the feature is a Sensitive Feature or the extent to which construction activities should be curtailed in response to the discovery of the potential Sensitive Feature, the GAC shall make such determinations. Related construction activities may resume after Landowner has obtained all authorization(s) for resumption of construction activities from SAWS or the GAC, as applicable, and otherwise as may be required under applicable law. Each Landowner shall implement, at the Landowner's sole expense, such temporary and permanent best management practices to protect Sensitive Features required by SAWS on an immediate basis. All further construction activity which could affect such Sensitive Feature(s) shall incorporate temporary and permanent best management practices required by SAWS, if any.
- 1.4.3. Amendment of Geologic Map. Declarant agrees that the Geologic Map may be updated by SAWS from time to time only to reflect any additional Sensitive Features jointly approved by SAWS and Developer or identified by the GAC. SAWS may impose reasonable requirements for buffering or other protective measures with respect to such additional Sensitive Feature(s). Upon delivery of such amended Geologic Map to Declarant and City, the amended Geologic Map will supercede and replace the then existing Geologic Map. Upon request of any Landowner, SAWS shall provide a copy of the current Geologic Map to such Landowner and may impose a reasonable charge to defray the costs of reproducing said Geologic Maps.
- 1.5. Underground Storage Tanks. The installation or operation of an Underground Storage Tank System, whether on a temporary or permanent basis, is prohibited.
- 1.6. Above Ground Storage Tank Systems. No Above Ground Storage Tank Systems may be installed or operated on the Land unless such systems comply with the requirements of the Golf Course Environmental Management Plan.
- 1.7. Private Sewage Facilities. Private on-site sewage facilities, as defined in *Title 30, Section 285.2, Texas Administrative Code*, may only be installed (i) on the Non-Contiguous Tract and (ii) in a total of two locations situated on the Golf Course Tracts north of Cibolo Canyon Boulevard, provided the two private on-site sewage facilities on the Golf Course Tracts comply with the requirements applicable thereto set forth in Section 4.32 of the Golf Course Environmental Management Plan.
- 1.8. Fire Service Support. So long as City has contractually agreed with Declarant to provide fire protection and fire fighting services, each Landowner which constructs or causes to be constructed commercial buildings and related improvements on the Land shall provide:

- 1.8.1 Two (2) copies of the plans and specifications for all such improvements to City's Director of Developmental Services;
- 1.8.2. Reasonable access to persons designated by City for the purposes of inspecting such improvements; and
- 1.8.3 An engineer's site plan which depicts the location of such improvements to City's Fire Chief prior to commencement of construction of such improvements.

Article 2. Restrictions Applicable to Non-Golf Course Land

The Non-Golf Course Land is hereby encumbered by the Restrictions set forth in Article 1 of this Declaration and the following covenants and restrictions:

- 2.1 Landscaping. Only low-water use landscapes will be permitted in landscaping lawns, ornamental landscape areas, greenbelts and open space areas on the Non-Golf Course Land. The landscapes shall comply with City guidelines established for new construction, including:
 - 2.1.1 Use of native species which are drought tolerant and require low-water usage;
- 2.1.2 Preservation of existing tree canopy or installation of high-quality shade trees, using species identified by the Texas Forestry Service as appropriate; and
 - 2.1.3 Irrigation systems which comply with the UDC.
- 2.2 Pesticides and Herbicides; Fertilizers. Unless otherwise approved by SAWS, all Non-Golf Course Land shall be subject to any requirements and restrictions relating to pesticide, herbicide or fertilizer use which may be generally imposed by SAWS from time to time to protect water quality in the ERZD, including (without limitation) moratoria on the application of specific or all pesticides, herbicides, or fertilizers believed to have the potential for degrading water quality. Without limiting the authority of SAWS to impose additional requirements or restrictions regarding such substances (including moratoria), the following shall apply:
- 2.2.1 Fertilizers. Only approved organic fertilizers may be applied to the Non-Golf Course Land. An organic fertilizer will be deemed approved for so long as such substance has been certified for use by SAWS. No fertilizer applications may occur in buffer zone areas identified on the Geologic Map, as amended.
- 2.2.2 Pesticides and Herbicides. In landscaped areas on the Non-Golf Course Land, only approved organic pesticides and herbicides may be used to control potential pests, including without limitation, fire ants, mosquitoes, roaches, rodents, fleas, termites and turfgrass weeds, diseases and pests, unless otherwise approved in writing by SAWS. An organic pesticide or herbicide will be deemed approved for so long as such substance has been certified for use by SAWS. No pesticide or herbicide applications may occur in buffer zone areas identified on the Geologic Map, as amended.
- 2.3 Construction Requirements. All construction activities on the Non-Golf Course Land shall be subject to the following limitations, conditions and requirements:
- 2.3.1 Waste. All construction related waste, including without limitation, oils, grease, tires, batteries, cleaning solvents and empty containers, shall be disposed of in approved, covered, non-leaking containers, in a timely manner in accordance with applicable regulations.
 - 2.3.2 Fuel Storage. Fuels shall not be stored on the Non-Golf Course Land.
- 2.3.3 Fuel Spills. In accordance with all applicable regulations, any spills or releases of fuels or other potentially polluting substances or materials shall be cleaned immediately and disposed of. All details concerning such spill or release shall be documented, including the subject product, quantity spilled or released,

location, time, date, action taken and any other requested information, and shall be reported to SAWS Construction Compliance Section.

Article 3. Restrictions on Golf Course Tracts

Portions of the Land to be hereafter identified by Developer as Golf Course Tracts are intended to be used for two (2) or more golf courses. The Golf Course Tracts shall be encumbered by the Restrictions set forth in Article 1 of this Declaration and the following further covenants and restrictions:

- 3.1 Designation of Golf Course Tracts; Amendments. Prior to commencing any Golf Course Permitted Uses on any portion of the Land, Declarant shall execute and cause to be filed for record in the Official Records a Supplement, a plat or plat amendment to identify and describe such portion of the Land as a Golf Course Tract. Such portion of the Land will be thereby designated and restricted as a Golf Course Tract for the purposes of this Declaration. To accommodate the physical design dimensions of a Golf Course Permitted Use, Declarant may file any amended Supplement(s) or plat amendments as necessary to correct the metes and bounds description of such Golf Course Tract.
- 3.2 Permitted Uses. The Golf Course Tracts shall not be used, leased, or occupied, directly or indirectly for any purpose other than either Golf Course Permitted Uses or Open Space Area. If any portion of a Golf Course Tract is not improved for Golf Course Permitted Uses, or if so improved and such use has been permanently abandoned, such unused portion shall be and is hereby restricted as Open Space Area in perpetuity.
- 3.3 Minimum Acreage. If three (3) or more golf courses are constructed on the Land, the land area of all Golf Course Tracts and Open Space Area on the Land shall be not less than a total of eight hundred (800) acres. If less than three (3) golf courses are constructed on the Land, the land area of all Golf Course Tracts and Open Space Area shall be not less than a total of five hundred (500) acres. For the purpose of this calculation, all Open Space Area must be either contiguous to a Golf Course Tract, or if not contiguous to a Golf Course Tract, at least five (5) acres in area.
- 3.4 Designation of Open Space Area Tracts. Declarant shall execute and cause to be filed for record in the Official Records a Supplement, a plat or plat amendment to identify and describe each portion of the Land to be restricted as Open Space Area. Such portion of the Land will be thereby designated and restricted as Open Space Area for the purposes of this Declaration.
- 3.5 Golf Course Environmental Management Plan. The Golf Course Tracts, if used for Golf Course Permitted Uses, and all Golf Course Related Improvements shall be subject to the terms, conditions, restrictions, duties and obligations to be observed and performed pursuant to the Golf Course Environmental Management Plan, as same may be amended from time to time according to its terms. Notwithstanding Subsection 1.1.2.5 hereof, irrigation of the Golf Course Tracts and the Golf Course Related Improvements shall be subject to Section 4.36.6 of the Golf Course Environmental Management Plan.
- 3.6 Mandatory Payment for Water Quality Monitoring. Declarant and each Landowner owning any part of a Golf Course Tract used for Golf Course Permitted Uses shall be jointly and severally liable to pay to SAWS the sum of One Hundred Thousand Dollars (\$100,000.00) per year until the termination of the Services Agreement, as required pursuant to the terms of the Golf Course Environmental Management Plan.

Article 4. Easements and Access.

The Land shall be and is hereby encumbered by the following easement and covenants, each to run with the Land and to bind the Declarant and its successors and assigns and each Landowner:

4.1 General Monitoring Easement and Right to Inspect. A General Monitoring Easement is hereby created in favor of and granted to the Enforcing Authorities for the purpose of monitoring ground water quality in accordance with the Golf Course Environmental Management Plan, subject to the limitation that the easement rights hereby created and granted may not be exercised in a manner or at a time which unreasonably interferes with the use and enjoyment of the Golf Course Tracts, the Golf Course Related Improvements or the Non-Golf Course Land. The

easement rights hereby created and granted shall continue to be exercised and enjoyed by the Enforcing Authorities unless and until limited, replaced or superceded by Specific Monitoring Easements pursuant to Section 4.3.

- 4.2 Right to Inspect. A right to inspect is hereby created in favor of and granted to the Enforcing Authorities for the purpose of monitoring compliance with these Restrictions, subject to the limitation that the inspection rights hereby created and granted may not be exercised in a manner or at a time which unreasonably interferes with the use and enjoyment of the Land.
- 4.3 Specific Monitoring Easements For Water Quality Monitoring. With respect to each location on the Land to be used to conduct surface water sampling and each well to be used to monitor ground water quality in accordance with, and for any other locations on the Land to be used by the Enforcing Authorities to monitor compliance with the applicable Restrictions, Declarant, at its option, shall have the right to identify and describe by metes and bounds each such location and a means of ingress and egress to each such location across a public street or easement to be dedicated on the subdivision plat for such portion of the Land by executing Specific Monitoring Easements, the means of ingress and egress to the locations referenced in the Specific Monitoring Easements shall be limited to the routes described in the Specific Monitoring Easement, provided, however, that the means of ingress and egress, the location and routes described in each Specific Monitoring Easements are reasonably adequate for the monitoring purposes thereof and are not unreasonably burdensome to the Enforcing Authorities. Notwithstanding the foregoing, if the location of a monitoring well or other improvement must be changed because Declarant has altered the location of the easement required to access such location, Declarant shall reimburse the affected Enforcing Authority for the costs of relocation of such improvement.

Article 5. Enforcement.

The Enforcing Authorities are hereby authorized to enforce the Restrictions, acting individually or in any combination thereof. Enforcement of the Restrictions of this Declaration set forth herein may be by each of the Enforcing Authorities, acting individually or in any combination thereof. Enforcement of the Restrictions of this Declaration may be by a proceeding at law or in equity against any person(s) or entity(ies) violating or attempting to violate the Restrictions, whether the relief sought is an injunction or the recovery of damages, or otherwise. Any failure or delay in enforcing any Restriction set forth herein shall in no event be deemed to be a waiver of the right to do so or to seek damages or other relief thereafter. The failure of any person to comply with these Restrictions shall in no event be deemed or construed to impose liability of any nature on any of the Enforcing Authorities, or the governing body or authorized representative of each of them, except to the extent such liability is imposed upon any of them (i) in its capacity as a Landowner or (ii) pursuant to the terms of the Golf Course Environmental Management Plan. The Enforcing Authorities have no affirmative duty to police, control or enforce such Restrictions for the benefit of any third party.

Article 6. Amendment, Termination and Survival.

- 6.1 Amendment. This Declaration may be amended or supplemented as to all or any portion of the Land pursuant to a written agreement containing such amendments or supplemental restrictive covenants, which shall be effective when signed by (i) Declarant or its successor in ownership of such portion of the Land to which the authority to amend this Declaration has been expressly assigned by Declarant, and (ii) the governing body or an authorized representative of City and recorded in the Official Records. Notwithstanding the foregoing, City's joinder shall not be required for a Supplement which identifies Golf Course Tracts, the Open Space Area or for any amendment to this Declaration after annexation of the Land by City.
- Agreement has terminated prior to the Completion of Construction of the first hotel on the Land. If the Services Agreement is terminated prior to the Completion of Construction of the first hotel on the Land, Declarant shall file in the Official Records, an affidavit signed and sworn to by Declarant, stating that (i) the Services Agreement has terminated and (ii) Completion of Construction of the first hotel on the Land has not occurred. Thereafter, this Declaration shall be of no further force or effect; provided, however, that if, at the time of termination, any portion of the Annexation Tracts is used and operated as a golf course, the Restriction set forth in Article 3.2 hereof and all related easements shall survive the termination of this Declaration and be enforceable in accordance herewith.

Article 7. Miscellaneous Provisions.

- 7.1 Notices. Any demand, request or other notice (collectively, a "notice") required or permitted to be given hereunder, or otherwise given in regard to this Declaration shall be in writing and the same shall be given and be deemed to have been served and received (a) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is being given (or, if applicable, when delivery is refused by the party to whom notice is being given), or (b) if mailed, on the date which is two (2) business days following the date on which such notice is placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party to whom notice is being given at the address for such party hereinafter specified.
- 7.2 Severability. The invalidation of any one of the Restrictions or covenants herein contained, or the failure to enforce any of such Restrictions or covenants at the time of its violation, shall in no event affect any of the other Restrictions or covenants contained nor be deemed a waiver of the right to enforce the same or any other restriction or covenant thereafter.
- 7.3 Constructive Notice; Acceptance. Every person who, now or hereafter, owns or acquires any right, title, or interest in or to any portion of the Land, whether as an owner, tenant, or occupant in any right or capacity, is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction herein contained, whether or not any reference to this Declaration shall be contained in the instrument by which such party acquires an interest in such portion of the Land.
- 7.4 Headings. The titles, headings, and captions used in this instrument are for convenience only and are not to be used in construing this instrument or any part hereof.
- 7.5 Continuing Effect. This Declaration, and all of its terms, provisions, covenants, conditions, and restrictions, shall run with the Land and be binding upon all future owners, tenants, and/or occupants of all or any portion of the Land, and their respective heirs, legal representatives, successors, and assigns, except to the extent this Declaration may be terminated pursuant to the terms hereof.
- 7.6 Exhibits. All documents referred to herein and all documents attached hereto are incorporated herein for all purposes.
- 7.7 Interpretation. If this Declaration or anything set forth herein is or may be capable of interpretation in two or more conflicting ways, then the interpretation which is most nearly in accord with the general principals, purposes and objectives of this Declaration shall govern and control the meaning thereof. If any punctuation, word, clause or provision necessary to give effect to any other word, clause or provision hereof has been omitted, then it is understood that such omission was unintentional and the omission may be supplied by inference.
- 7.8 Attorney's Fees.. If any Enforcing Authority incurs reasonable expenses of any kind, including attorneys' fees, to enforce this Declaration and shall prevail in such enforcement, the Enforcing Authority is entitled to recover such expenses from the person(s) against whom enforcement actions were taken.
- 7.9 Waiver. The Restrictions shall not be waived or rendered unenforceable by reason of any lack of enforcement by any Enforcing Authority.

Dated as of the date of the acknowledgment.

EXHIBITS:

Exhibit "A-1": Legal Description of Annexation Tracts
Exhibit "A-2": Legal Description of Non-Contiguous Tract
Exhibit "B": Golf Course Environmental Management Plan

Exhibit "C": Form of Supplemental Declaration of Restrictive Covenants

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:		IVESTMENT CORPORATION,
	a Delaware corporation	on
	Ву:	
	JOHN PIERI	
	EXECUTIVI	E VICE PRESIDENT
	*	
THE STATE OF TEXAS	§	
	§ §	
COUNTY OF BEXAR	§	
This instrument was acl	knowledged before me on	, 2002, by JOHN PIERRET
	BERMEN'S INVESTMENT CORPORAT	ΓΙΟΝ, a Delaware corporation, on behal
of said corporation.		
[seal]		
	Notary Public, State of	f Texas
My Commission Expires:		
	Printed/Typed Name	

EXHIBIT A - 1 TO DECLARATION OF RESTRICTIVE COVENANTS

DESCRIPTION OF ANNEXATION TRACTS

TRACT ONE

A 1392.7 acre, or 60,666,506 square feet, more or less, tract of land being comprised of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and that 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the Rompel Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 1392.7 acre tract being more fully described as follows:

BEGINNING: At a found 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of

Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the

aforementioned 1394.189 acre tract:

THENCE: N 23°23'37"W, bearings being based of the North American Datum of 1983, from State Plane

Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47"W, 1274.56' by deed, the distance of 1274.56 feet being comprised of this call for 1203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April

of 1987);

THENCE: N 23°30'17"W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet

to a found 1/2" iron rod set in concrete at an angle point;

THENCE: N 23°32'11"W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet

to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, said iron rod also being the southwest corner of a 229.000 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas, (N

25°07'30"W by deed);

THENCE: N 73°12'18"E, departing said east line of Fossil Ridge Subdivision, a distance of 2007.69 feet to a

point;

THENCE: N 01°22'40"W, a distance of 376.50 feet to a point;

THENCE: N 13°37'20"E, a distance of 825.00 feet to a point;

THENCE: N 23°30'23"W, a distance of 400.85 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N65°11'27" W, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of N 00°39'05" E, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N58°53'08" E, a radius of 1000.00 feet, a central angle of 55°55'25", a chord bearing and distance of N 03°09'09" W, 937.77 feet, and an arc length of 976.05 feet to a point;

THENCE:

N 31°06'52"W, a distance of 110.00 feet to a point;

THENCE:

S 58°53'08"W, a distance of 486.65 feet to a point;

THENCE:

Along the arc of a curve to the left, said curve having a radial bearing of S23°53'08" W, a radius of 1000.00 feet, a central angle of 55°00'00", a chord bearing and distance of S 86°23'08" W, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE:

N 66°06'52"W, a distance of 1650.00 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N06°06'52" W, a radius of 1400.00 feet, a central angle of 30°00'00", a chord bearing and distance of N 81°06'52" W, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE:

S 83°53'08"W, a distance of 126.94 feet to a point;

THENCE:

S 23°30'23"E, a distance of 603.61 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1394.189 acre tract being the northeast corner of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract;

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1581.35 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 87°49'00"W, 7167.93' by deed, the distance of 7167.93 feet being comprised of this call for 1581.35 feet, the next call for 1373.99 feet, 4091.02 feet along the north line of the aforementioned 194.2434 acre tract and a distance of 21.92 feet to the old right-of-way line of Bulverde Road which is described in a Bulverde Road right-of-way map dated November of 1985);

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1373.99 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the northwest corner of the 403.9458 acre tract and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 89°24'59"W, along and with the south line of the 1394.189 acre tract and the north line of the 194.2434 acre tract, a distance of 4090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road and at the northwest corner of the said 194.2434;

THENCE:

Along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 10°32'43" W, a distance of 2.67 feet to a point;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 22°37'38", a chord bearing and distance of N 00°46'06"E, 391.97 feet and an arc length of 394.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 12°04'55"E, a distance of 214.65 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly, with a curve to the right, said curve having a radius of 1102.00 feet, a central angle of 30°40'02", a chord bearing and distance of N 27°24'56" E, 582.82 feet, and an arc length of 589.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 42°44'57"E, a distance of 274.54 feet to a found 1/2" iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of a 135.532 acre tract described in instrument recorded in Volume 5350, Page 2076-2081 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

N 89°25'08"E, departing the east right-of-way line of Bulverde road, along and with the south line of the 135.532 acre tract, a distance of 5968.30 feet to a found 1/2" iron rod at the southeast corner

of the said 135.532 acre tract;

THENCE: N 23°29'40"W, a distance of 1190.36 feet, (N 25°05'12"W, 3406.40' by deed, the combined deed

distance of 3406.40 feet in this call and that of the deed distance of 1064.15 feet quoted in the next call, being comprised of this call of 1190.36 feet, and next two calls of 2783.83 feet, and 494.80 feet), to a found 1/2" iron rod at the northeast corner of the 135.532 acre tract and the southeast corner of a 1350.297 acre tract recorded in Volume 4859, Pages 292-312 of the Official Public Records of

Real Property of Bexar County, Texas;

N 23°29'40"W, along and with the east line of the 1350.297 acre tract, a distance of 2783.83 feet, THENCE:

(N 25°18'04"W, 1064.15' by deed) to a found 1/2" iron rod marked MBC at an angle point;

N 23°54'32"W, along and with the east line of the 1350.297 acre tract, a distance of 494.80 feet to THENCE:

a found 1/2" iron rod at the northwest corner of this tract;

N 55°13'56"E, along and with the south line of the 1350.297 acre tract, a distance of 346.08 feet to THENCE:

a found 1/2" iron rod at an angle point;

THENCE: N 55°17'34"E, along and with the south line of the 1350.297 acre tract, a distance of 381.68 feet to

a found 1/2" iron rod at an angle point;

N 54°44'11"E, along and with the south line of the 1350.297 acre tract, a distance of 894.23 feet to THENCE:

a found ½" iron rod at an angle point, (N 53°31'36"E, 2026.43' by deed);

N 55°46'21"E, along and with the south line of the 1350.297 acre tract, a distance of 403.85 feet to THENCE:

a found iron rod in the northwest corner of a 785.4 acre tract out of a 927.064 acre tract recorded in Volume 5362, Pages 756-764 of the Official Public Records of Real Property of Bexar County,

Texas;

THENCE: S 54°16'26"E, departing the south line of the 1350.297 acre tract, along and with the west line of the

785.4 acre tract, a distance of 3325.13 feet to a found iron rod at an angle point, (S 55°52'24"E,

3325.13' by deed);

THENCE: S 54°11'40"E, along and with the west line of the 785.4 acre tract, a distance of 5267.86 feet to a

fence post at an angle point, (\$ 55°47'33"E, 5277.27' by deed);

THENCE: S 50°09'55"E, along and with the west line of the 785.4 acre tract, a distance of 253.64 feet to a

found iron rod in the northeast corner of a 51.788 acre tract described in instrument recorded in Volume 7002, Pages 658-662 of the Official Public Records of Real Property of Bexar County,

Texas;

THENCE: S 03°57'49"E, departing the west line of the 785.4 acre tract, along and with the west line of the

51.788 acre tract, passing at 1048.25 feet a fence post at the southwest corner of the 51.788 acre tract and the northwest corner of a 30.04 acre tract described in instrument recorded in Volume 5362, Pages 1539-1542 of the Official Public Records of Real Property of Bexar County, Texas and continuing along and with the west line of the 30.04 acre tract a total distance of 1479.02 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (\$05°30'33"E, 1478.86'

by deed);

THENCE:

S 08°30'05"E, along and with the west line of the 30.04 acre tract, a distance of 382.99 feet to a found ½" iron rod at an angle point (S 09°56'00"E, 382.42' by deed);

THENCE:

S 01°31'55"W, along and with the west line of the 30.04 acre tract, passing at 396.50 feet a fence post at the southwest corner of the said 30.04 acre tract and the northwest corner of a 24.95 acre tract described in instrument recorded in Volume 4884, Pages 1495-1498 of the Official Public Records of Real Property of Bexar County, Texas, and continuing along and with the west line of the 24.95 acre tract a total distance of 1192.66 feet to a found 5/8" iron rod at the southwest corner of the 24.95 acre tract and the northwest corner of a 185.610 acre tract of land described in instrument recorded in Volume 4525, Pages 164-167 of the Deed Records of Bexar County, Texas, (S 00°10'35"E, 1193.13' by deed);

THENCE:

S 16°01'29"W, along and with the west line of the 185.610 acre tract, a distance of 5051.21 feet, (S 14°18'24"W, 2685.40' and S 14°33'47"W, 2366.39' by deed); to a found ½" iron rod in the north right-of-way line of Evans Road, a 110 foot right-of-way;

THENCE:

N 77°10'31"W, along and with the north right-of-way line of Evans Road, passing at 1600.26 feet the southwest corner of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and continuing for a total distance of 2134.38 feet to a found ½" iron rod at a point of curvature;

THENCE:

Northwesterly, along the arc of a curve to the right, said curve having a radius of 2578.39 feet, a central angle of 8°52'15", a chord bearing and distance of N 72°44'24" W, 398.80 feet, and an arc length of 399.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

THENCE:

N 68°18'16"W, a distance of 213.96 feet to the POINT OF BEGINNING and containing 1392.7 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

October 22, 2002

JOB No.:

3538-24

DOC.ID.:

H:\3538\24\WORK\FN\021018-A4-1394.doc

TRACT TWO

A 229.0 acre, or 9,973,288 square feet, more or less, tract of land being comprised of that 229.00 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 229.0 acre tract being more fully described as follows:

COMMENCING: At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, and a corner of a 1,394.189 acre tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°23'37" W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1,203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47" W, 1,274.56' by deed, the distance of 1,274.56 feet being comprised of this call for 1,203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE: N 23°30'17" W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

N 23°32'11" W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to the POINT OF BEGINNING at a found ½" iron rod with a yellow cap marked "Pape-Dawson", being the southwest corner of the 229.0 acre tract herein described;

N 23°31'11" W, along and with the east line of Fossil Ridge Subdivision, passing at 104.93 feet a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of Lot 17, Block 4 of Fossil Ridge Subdivision, and continuing for a total distance of 1,289.32 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of said Fossil Ridge Subdivision;

THENCE: N23°31'11" W, along and with the east line of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract, a distance of 2,726.01 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1,394.189 acre tract;

THENCE: N 23°30'23" W, a distance of 603.61 feet to a point;

THENCE:

THENCE:

THENCE: N 83°53'08" E, a distance of 126.94 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 06°06'52" E, a radius of 1,400.00 feet, a central angle of 30°00'00", a chord bearing and distance of S 81°06'52" E, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE: S 66°06'52" E, a distance of 1,650.00 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N 23°53'08" E, a radius of 1,000.00 feet, a central angle of 55°00'00", a chord bearing and distance of N 86°23'08" E, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE: N 58°53'08" E, a distance of 486.65 feet to a point;

THENCE: S 31°06'52" E, a distance of 110.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 58°53'08" W, a radius

of 1,000.00 feet, a central angle of 55°55'25", a chord bearing and distance of S 03°09'09" E, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of S 5°11'27" E, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of S00°39'05" W, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: S 23°30'23" E, a distance of 400.85 feet to a point;

THENCE: S 13°37'20" W, a distance of 825.00 feet to a point;

THENCE: S 01°22'40" E, a distance of 376.50 feet to a point;

THENCE: S 73°12'18" W, a distance of 2,007.69 feet to the POINT OF BEGINNING and containing 229.0

acres of land in Bexar County, Texas. Said tract being described in accordance with a survey

prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 22, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-A3-229

TRACT THREE

A 187.20 acre, or 8,154,390 square feet, more or less, tract of land out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 in Bexar County, Texas. Said 187.20 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road, an 86-foot right-of-way, being at a northwest corner of Fossil Creek Subdivision, Unit 1, recorded in Volume 9541, Pages 177-178 of the Deed and Plat Records of Bexar County, Texas, and the southernmost corner of the herein described tract;

THENCE:

Northwesterly, along and with the east right-of-way line of Bulverde Road with a curve to the left, having a radial bearing of S 67°45'32" W, a radius of 1,313.00 feet, a central angle of 22°59'41", a chord bearing and distance of N 33°44'18" W, 523.42 feet and an arc length of 526.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 1.511 acre tract known as Parcel 12E, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 1.511-acre tract the following bearings and distances;

N 04°41'26" W, a distance of 198.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 21°13'51" W, a distance of 59.48 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 44°11'00" W, a distance of 83.79 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 63°24'38" W, a distance of 432.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 70°15'43" W, a distance of 71.04 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 79°40'49" W, a distance of 370.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 1.511-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 58°46'37" W, a distance of 310.51 feet, to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 1002.00 feet, a central angle of 34°57'20', a chord bearing and distance of N 41°17'57" W, 601.87 feet and an arc length of 611.31 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 23°49'18" W, a distance of 788.47 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northwesterly with a curve to the left, said curve having a radius of 1,475.00 feet, a central angle of 14°53'03", a chord bearing and distance of N 31°15'49" W, 382.10 feet and an arc length of

383.17 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 0.034 acre tract known as Parcel 12G, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 0.034-acre tract the following bearings and distances;

N 30°24'18" W, a distance of 110.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 64°10'27" W, a distance of 52.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 0.034-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 41°59'45" W, a distance of 123.38 feet to a found 1/2" iron rod at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 31°27'02", a chord bearing and distance of N 26°16'14" W, 541.51 feet and an arc length of 548.37 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 10°32'43" W, a distance of 219.57 feet to a found ½" iron rod at the northwest corner of the aforementioned 194.2434 acre tract, the west corner of a 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas and at an angle point;

THENCE:

N 89°24'59" E, departing the east right-of-way line of Bulverde road, along and with the south line of the 1,394.189 acre tract, a distance of 4,090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" at the northwest corner of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 19°21'43" W, along and with the west line of the 403.9458 acre tract, a distance of 1,027.05 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S17°48'10" W, 1,026.69 feet by deed);

THENCE:

S 89°26'18" W, along and with the 403.9458 acre tract, a distance of 480.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

THENCE:

S 00°19'34" E, along and with the 403.9458 acre tract, passing at 1,437.69 feet a found 60 penny nail at the northwest corner of Fossil Creek Subdivision, Unit 1, and continuing for a total distance of 2,422.64 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 01°56'52" E, 2,422.66 feet by deed);

THENCE:

S 60°02'12" W, along and with Fossil Creek Subdivision, Unit 1, a distance of 500.02 feet to the POINT OF BEGINNING and containing 187.20 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 18, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-a1-194

TRACT FOUR

A 785.4 acre, or 34,210,000 square feet, tract of land being the remainder of that 927.064 acre tract described in deed from Henry Van de Walle et al to Dan F. Parman in Volume 3089, Page 1393-1399 of the Official Public Records of Real Property of Bexar County, Texas, and conveyed to Peter Wolverton in Volume 5382, Page 756-764 of the Official Public Records of Real Property of Bexar County, Texas out of the E. Martin Survey 89, Abstract 524, County Block 4909, the E. Gonzales Survey 441, Abstract 288, County Block 4902, the Salvador Flores Survey No. 440, Abstract 243, County Block 4907, the Jil Jimenez Survey 358, Abstract 821(Bexar) 682(Comal), County Block 4905, the W. H. Hughes Survey No. 478, Abstract 345(Bexar) 364(Comal), County Block 4906, and the F. Valdez Survey No. 478½, Abstract 787, County Block 4908, in Bexar and Comal Counties, Texas. Said 785.4 acres being more particularly described as follows:

BEGINNING:

at a set ½" iron rod with yellow cap marked "Pape-Dawson" at the southernmost corner of this tract, on the south line of said 927.064 acre tract, at the southwest corner of a 99.900 acre tract out of said 927.064 acre tract, the southwest corner of said 99.900 acre tract and said 927.064 acre tract being S 64°40'20" E, a distance of 780.00 feet to a found ½" iron rod, S 65°48'16" E, a distance of 1696.16 feet to a found ½" iron rod;

THENCE:

Along and with the south line of said 927.064 acre tract the following calls and distances:

N 65°40'20"W, at 29.25 feet passing the northeast corner of a 51.788 acre tract conveyed to John B. Webb in Volume 7002, Page 658-682 of the Official Public Records of Real Property of Bexar County, Texas, and continuing with the south line of said 927.064 acre tract for a total distance of 1636.13 feet to a found ½" iron rod;

N 49°15'20"W, a distance of 1274.99 feet to a found ½" iron rod at the northwest corner of said 51.788 acre tract, the northeast corner of a 1394.189 acre tract conveyed to Lumbermans Investment Corporation in Volume 5792, Page 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 50°51'38" W, 1276.71 feet;

N 50°09'55"W, a distance of 253.64 feet to a found 1/2" iron rod, by deed N 51°46'13"W, 246.49 feet;

N 54°11'40"W, a distance of 5267.86 feet to a found ½" iron rod in a 30" Live Oak, by deed N 55°47'33" W, 5276.83 feet;

N 54°16'26"W, a distance of 3325.13 feet to a found ½" iron rod at the southwest corner of the said 927.064 acres, the northwest corner of said 1394.189 acre tract, on the southeast line of a 1350.297 acre tract conveyed to the Poerner Family Partnership in Volume 4869, Page 292-312 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 55°52'19" W, 3325.35 feet;

THENCE:

N 54°59'55"E, a distance of 2448.93 feet to a found ½" iron rod at the northwest corner of said 927.064 acre tract, by deed N 53°24'02" E, 2449.06 feet;

THENCE:

Continuing with the north line of said 927.064 acre tract the following calls and distances:

S 41°19'21"E, a distance of 1536.97 feet to a found 1/2" iron rod, by deed S 42°55'36" E, 1536.87 feet;

N 79°13'24"E, a distance of 849.81 feet to a found 1/2" iron rod, by deed N 77°37'30" E, 849.79 feet;

S 80°58'59"E, a distance of 1577.28 feet to a found ½" iron rod in 18" Cedar, by deed S 82°36'03" E, 1577.43 feet;

S 19°36'38"E, a distance of 238.56 feet to a found ½" iron rod in 17" Cedar, by deed S 21°16'00" E, 238.76 feet;

S 31°12'31"E, a distance of 408.74 feet to a found ½" iron rod in 20" Cedar, by deed S 32°46'48" E, 408.62 feet;

THENCE:

S 38°28'19"E, a distance of 513.61 feet to a found ½" iron rod at the north corner of a 7.312 acre tract conveyed to John L. and Mary H. McClung in Volume 6934, Page 826-829 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of that 40.955 acre tract out of said 927.064 acre tract conveyed to John O. Spice in Volume 6932, Page 279-286 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

Along and with the south line of said 40.955 acre tract the following calls and distances:

S 76°31'41"W, a distance of 408.43 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S74°57'31" W, 408.99 feet;

S 09°28'05"E, a distance of 244.99 feet to a found 1/2" iron rod, by deed S 11°10'57"E, 245.63 feet;

S 44°28'05"E, a distance of 310.27 feet to a found ½" iron rod, by deed S 46°10'57" E, a distance of 310.00 feet;

S 59°36'52"E, a distance of 289.82 feet to a found 1/2" iron rod, by deed S 61°10'57" E, 290.07 feet;

S 88°19'58"E, a distance of 1558.63 feet to a found 1/2" iron rod, by deed East 1558.42 feet;

S 66°02'47"E, a distance of 318.27 feet to a found 1/2" iron rod, by deed S 67°40'05" E, 318.43 feet;

S 88°18'36"E, a distance of 895.37 feet to a found 1/2" iron rod, by deed East, 894.76 feet;

N 74°47'26"E, a distance of 418.72 feet to a found ½" iron rod, bent, by deed N 73°10'20" E, 417.94 feet;

S 88°07'27"E, at 626 feet passing the centerline of the Cibolo Creek and continuing for a total distance of 954.80 feet to a found ½" iron rod at the southeast corner of said 40.955 acre tract, on the east line of said 927.064 acre tract;

THENCE:

Along and with the east line of said 927.064 acre tract the following calls and distances:

S 16°12'32"E, a distance of 527.73 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of said Cibolo Creek, by deed S 17°50'29" E;

THENCE:

S 63°21'01"E, a distance of 311.99 feet to a set ½" iron rod with cap marked "Pape-Dawson" on the northeast corner of the said E. Martin Survey, on the south line of the said W. H. Hughes Survey 478, from which a 60" Live Oak bears N 43°E, a distance of 32.6 feet (11 ¾ varas) called a double 20" Live Oak in the deed of 392.0 acres from Dierks to 4D Bar Ranch recorded in Document 98-06026868 of the Official Records of Comal County, by deed S63°15'29"E, 328.78 feet;

THENCE:

S 10°13'15"E, along and with the west line of said 392.0 acres, called as southerly line of the Joseph Thompson Survey 758, a distance of 2453.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of the Cibolo Creek, the northeast corner of the aforementioned 99.900 acre tract, by deed S 11°45'29" E;

THENCE:

Along and with the north and west line of said 99,900 acre tract the following calls and distances:

S 79°50'41" W, a distance of 1149.13 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S78°14'31"W, 1150.73 feet;

S 08°48'58" W, a distance of 1577.45 feet to a set 1/2" iron rod with cap marked "Pape-Dawson", by deed S 07°12'48" W, 1577.45 feet;

THENCE:

S 24°18'58"W, a distance of 249.84 feet, by deed S 22°42'48" W, 250.00 feet, to the POINT OF BEGINNING and containing 785.4 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: JOB No.: September 19, 2000

9988-00

DOC.ID.:

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TRACT FIVE

A 2.858 acre, or 124,493 square feet, more or less, tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W. M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 2.858 acre tract being more fully described as follows:

BEGINNING:

At a set ½" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center line Station 39+03.31, at the most southerly northeast corner of Parcel 12F, a 1.904 acre tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE:

Departing the west right-of-way line of Bulverde Road, along and with the east line of Parcel 12F the following bearings and distances;

S 87°28'16"W, a distance of 418.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 73°07'57"W, a distance of 151.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 30°12'08"W, a distance of 113.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 01°05'28"E, a distance of 97.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 33°47'18"E, a distance of 229.50 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the west right-of-way line of said Bulverde Road;

THENCE:

Northeasterly, along and with the west right-of-way line of Bulverde Road, with a curve to the left, said curve having a radial bearing of N 55°47'04" E, a radius of 1088.00 feet, a central angle of 24°33'41", a chord bearing and distance of S 46°29'46" E, 462.84 feet and an arc length of 466.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 58°46'37"E, along and with the west right-of-way line of Bulverde Road, a distance of 181.34 feet to the POINT OF BEGINNING and containing 2.858 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

TRACT SIX

A 0.4893 acre, or 21,313 square feet, more or less tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 0.4893 acre tract being more fully described as follows:

BEGINNING At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of

Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center

line Station 21+68.58 at the southeast corner of this tract;

THENCE: S 60°26'26"W, departing the west right-of-way line of Bulverde Road, a distance of 26.83 feet to a

set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the east line of Parcel 12D, a 0.769 acre

tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE: Along and with the east line of Parcel 12D, the following bearings and distances;

N 32°32'25"W, a distance of 52.11 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 47°54'19"W, a distance of 128.87 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 27°44'21"W, a distance of 98.42 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 04°41'26"W, a distance of 135.59 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" in the west right-of-way line of Bulverde Road;

THENCE: Southeasterly, along and with the west right-of-way line of Bulverde Road, along the arc of a curve

to the right, said curve having a radial bearing of S49°42'58" W, a radius of 1227.00 feet, a central angle of 18°34'00", a chord bearing and distance of S 31°00'02" E, 395.87 feet, and an arc length of 397.61 feet to the POINT OF BEGINNING and containing 0.4893 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the

ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

EXHIBIT A-2 TO DECLARATION OF RESTRICTIVE COVENANTS

NON-CONTIGUOUS TRACT

A 258.1 acre, or 11,244,000 square foot tract of land out of W. W. Allen Survey No. 353, Abstract 34, County, Block 4866, the C. Vogel and F. Koch Survey No. 422, Abstract 984, County Block 4872; the Rompel, Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the Antonio Ruiz Survey No. 448, Abstract 638, County Block 4895, the J. W. Esther Survey No. 364, Abstract 219, County Block 4897, the E. Gonzalez Survey No. 441, Abstract 288, County Block 4902, the W. M. Brisbin Survey No. 89 ½, Abstract 54, County Block 4900, and the Charles Rompel Survey No. 448, Abstract 1089, County Block 4880, Bexar County, Texas, the same 258.1 acre tract described in conveyance to Michael A. Carabetta in Warranty Deed recorded in Volume 5352, Pages 500-504 of the Official Public Records of Real Property of Bexar County, Texas, said 258.1 acre being more particularly described by metes and bounds as follows:

BEGINNING: At a found 1/2" iron rod, said point being on the east right-of-way line of Smithson Valley Road,

right-of-way varies, the southeast corner of a called 4.9715 acre tract described in Volume 5535,

Pages 1084-1085 of the Official Public Record of Real Property of Bexar County, Texas;

THENCE: Departing the east right-of-way line of said Smithson Valley Road, along and with the south line of

said 4.9715 acre tract the following calls and distances:

N 80°22'30" E, a distance of 3053.24 feet to a found 1/2" iron rod;

N 80°22'20" E, a distance of 6664.34 feet to a found 1/2"iron rod;

N 80°32'09" E, a distance of 4387.96 feet to a set ½" iron rod with yellow cap marked "Pape Dawson"; and

N 83°34'30" E, a distance of 34.5 feet to the southeast corner of said 4.9715 acre tract, and continuing along and with the south line of a 1.898 acre tract described in Volume 6602, Pages 845-848 of the Official Public Records of Real Property of Bexar County, Texas, for a distance of 426.3 feet to the southeast corner of said 1.898 acre and continuing along and with the south line of a 14.843 acre tract described in Volume 5033, Page 1989-1992 of the Official Public Records of Real Property of Bexar County, Texas for a total distance of 1051.01 feet to a found ½" iron rod, the southeast corner of said 14.843 acre tract;

THENCE: N 11°00'02" E, along and with the east line of said 14.843 acre tract, a distance of 549.69 feet to

a found ½" iron rod, the easterly northeast corner of said 14.843 acre tract on the south line of a 45.74 acre tract of land described in Volume 1906, Pages 1-6 of the Official Public Records of Real

Property of Bexar County;

THENCE: N 89°57'11" E, along and with the south line of said 45.74 acre tract of land, a distance of 541.06

feet to a found 1/2" iron rod;

THENCE: N 03°33'04" W, along and with the east line of said 45.74 acre tract of land, a distance of 1580.54

feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", an angle point on the west line of a 50 acre tract described in Volume 6471, Pages 284-290 of the Deed Records of Bexar County,

Texas;

THENCE: S 31°15'35" E, along and with the west line of said 50 acre tract, a distance of 2024.00 feet to a set

½" iron rod with a yellow cap marked "Pape-Dawson", the southwest corner of said 50 acre tract;

THENCE:

Along and with the northeast corner of a 671.13 acre tract of land described in Volume 64, Page 621-623 of the Deed Records of Bexar County, Texas the following calls and distances:

S 71°15'21" W, a distance of 12.14 feet to a found 1/2" iron rod;

S 80°18'18" W, a distance of 10.61 feet to a found 1/2" iron rod;

S 75°51'52" W, a distance of 54.34 feet to a found 1/2" iron rod;

S 03°17'35" E, a distance of 87.63 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 62°13'40" E, a distance of 69.88 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", the northeast corner of a 613.30 acre tract of land described in Volume 4719, Pages 422-429 of the Deed Records of Bexar County, Texas;

THENCE:

Along and with the northwest line of said 613.30 acre tract of land the following calls and distances:

S 55°06'33" W, a distance of 1447.64 feet to a set ½" iron rod a with yellow cap marked "Pape-Dawson";

S 55°22'44" W, a distance of 290.63 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 55°05'33" W, a distance of 1414.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 55°05'18" W, a distance of 2874.22 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson":

THENCE:

Departing the northwest line of said 613.30 acre tract, along and with the northeast line of a 1350.297 acre tract described in Volume 4869, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas

N 43°22'42" W, a distance of 275.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 57°35'24" W, a distance of 246.81 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 31°45'56" W, a distance of 756.76 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson":

N 19°43'56" W, a distance of 541.29 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 19°40'32" W, a distance of 213.89 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 81°30'06" W, a distance of 291.96 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

N 36°33'53" W, a distance of 140.19 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 81°24'04" W, a distance of 272.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 31°02'32" W, a distance of 204.10 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 30°04'50" W, a distance of 384.05 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 80°22'20" W, along and with the north line of said 1350.297 acre tract, a distance of 6684.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 80°22'30" W, continuing along and with the north line of said 1350.297 acre tract a distance of 3074.17 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", on the east right-of-way line of said Smithson Valley Road;

THENCE:

N 09°36'02" E, along and with the east right-of-way line of said Smithson Valley Road, a distance of 63.54 feet to a the POINT OF BEGINNING and containing 258.1 acre in the City of San Antonio, Bexar County, Texas, said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

December 8, 2000

JOB No.:

1475-00

DOC.ID.:

N:\survey00\0-1500\1475-00\fieldnotes.doc

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

GOLF COURSE ENVIRONMENTAL MANAGEMENT PLAN

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Cibolo Canyon Golf Course Environmental Management Plan

1.0 EXECUTIVE SUMMARY

This Cibolo Canyon Golf Course Environmental Management Plan ("PLAN") sets forth certain design, construction, management, water quality monitoring and corrective action requirements applicable to all golf courses and golf learning centers located within that certain real property more particularly described on Exhibit "A" attached hereto (the "Property"). The purpose of this PLAN is to protect the quality of surface water; maintain the quality of recharge to groundwater supplies, particularly the Edwards Aquifer and Trinity Aquifer; minimize erosion and transport of soil resulting from development activities; and preserve and protect native plant and wildlife habitats to the greatest extent practicable.

This Environmental Management Plan consists of the following sections:

- Introduction
- Surface and Groundwater Protection
- Design & Best Management Practices
- Water Quality Monitoring
- Corrective Action
- Enforcement
- Definitions

This PLAN shall be interpreted and applied to protect environmental quality in general, and so as to prevent degradation of surface and groundwater quality in particular.

EXHIBIT B

EXHIBIT B TO AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

STATE OF TEXAS § FIREFIGHTING SERVICES AGREEMENT §
COUNTY OF BEXAR §

This Firefighting Services Agreement ("Agreement") is entered into by and between the CITY OF SAN ANTONIO, a Texas home-rule municipality, situated primarily within Bexar County, Texas, hereinafter referred to as "City," acting by and through its City Manager, pursuant to Ordinance No. 96603, passed and approved on the 24th day of October, 2002, and LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation acting through its authorized representative, herein referred to as "Landowner." City and Landowner collectively are referred to as "Parties." This Agreement is entered into by the Parties pursuant to authority granted under Section 43.0563, Texas Local Government Code.

RECITALS

- A. Landowner is the owner of an aggregate of approximately 2,597.6473 acres of real property in Bexar County, Texas, as described on an instrument attached hereto for all purposes as Exhibit "A", referred to herein as the "Land", which is located within the exclusive extraterritorial jurisdiction of City.
- B. Landowner desires to develop the Land with a high quality, master-planned community; a full service, resort style hotel; single and multi-family residential housing; related commercial uses; and two (2) or more golf courses.
- C. Pursuant to Section 43.0563, Texas Local Government Code, City, the five representatives appointed by the Bexar County Commissioners Court under Section 43.0562(b) and Landowner have entered into that certain Agreement For Services In Lieu of Annexation (the "Services Agreement"), pursuant to which City has agreed to the continuation of the extraterritorial status of a portion of the Land for a period of fifteen (15) years, subject to the terms of such Services Agreement.
- D. The Services Agreement contains and incorporates by reference this form of Firefighting Services Agreement for the provision of fire protection for the Land and its inhabitants, which City and Landowner have agreed to enter into pursuant to the provisions of the Services Agreement.

NOW THEREFORE, the Parties hereto severally and collectively agree and by the execution hereof are bound to the mutual obligations herein contained and the performance and accomplishment of the tasks hereinafter described:

ARTICLE I PURPOSE

- 1.01 The purpose of this Agreement is to establish and clarify each Party's obligations, costs, and the manner and method of providing fire protection and fire fighting services to the structures to be built and located on the Land.
- 1.02 This Agreement is a contract for coverage only and not a partnership or joint venture between the Parties.

ARTICLE II TERM

The initial term of this Agreement shall be from the date of execution of this Agreement by City and Landowner (the "Effective Date") with a termination date of September 30 next occurring after the Effective Date. Thereafter, the Parties shall renew the Agreement on an annual basis to run contemporaneously with City's fiscal year ("Fiscal

Year"), which begins October 1 and ends September 30. The yearly renewal shall be automatic upon the expiration of the initial term and each succeeding one (1) year term, subject to ARTICLE VI hereof.

ARTICLE III CONSIDERATION

- 3.01 Annual Fee. Landowner agrees to compensate City for providing firefighting services pursuant to this Agreement by paying an annual fee equal to 5.162 cents per \$100 valuation of the assessed value of all portions of the Land included in a subdivision plat approved by City's Planning Commission. Such assessed value shall be established annually by Bexar Appraisal District. The initial valuation shall be the valuation most recently established by Bexar Appraisal District prior to the Effective Date.
- 3.02 **Response Fees.** The annual fee described in Section 3.01 will not include the response fee(s) required for hazardous materials (HAZMAT) incidents, as such fee(s) are established in City Ordinance No. 72267, as amended.
- 3.03 Invoices. Commencing upon the Effective Date, City shall submit invoices on the tenth (10th) day of each month to Landowner representing 1/12th of the fee agreed to for the applicable fiscal year. The invoices shall be sent by City to Landowner at the address provided in Section 9.01 of this Agreement. Within thirty (30) days of receipt of an invoice, Landowner shall remit payment of the invoice to City Finance Department at P.O. Box 839966, San Antonio, Texas 78283-3966, or such other address as may be hereafter provided to Landowner in writing.

ARTICLE IV DEVELOPMENT AND CONSTRUCTION

- 4.01 Conveyance and Development. Landowner covenants and agrees:
- (a) If Landowner is not the owner of all of the Land on the Effective Date (as defined in the Services Agreement), Landowner shall obtain the execution of this Agreement by all owners of the Land on the Effective Date.
- (b) The development of the Land and the construction of all commercial buildings thereon will be subject to and governed by all provisions and requirements of the Unified Development Code (as defined in the Services Agreement and as same may be amended, from time to time, as described in the Services Agreement) directly relating to fire prevention and safety.
- 4.02 As a condition to receive service under this Agreement, the Parties agree and understand that each landowner constructing a commercial building on the Land must provide (a) two copies of the plans and specifications for such commercial building to the Director of Developmental Services; (b) reasonable access to persons designated by the City for the purpose of inspecting the commercial building; and (c) an engineers site plan, showing the location of the new building or buildings to be provided fire protection prior to the date construction starts, to the City Fire Chief.
- 4.03 In the event of any conflict between the terms and conditions of this Agreement and the Services Agreement, the relevant terms and conditions of the Services Agreement shall take precedence over the terms and conditions of this Agreement.

ARTICLE V ACKNOWLEDGMENTS AND REPRESENTATIONS

5.01 City hereby represents that it will use its best efforts in providing fire protection and fire fighting services as provided in this Agreement; however, Landowner hereby acknowledges and understands that because the Land lies outside of its municipal boundaries, City's response time to a fire alarm may be increased due to such location and agrees that the risk associated with the potential increase in response due to geographic location is acceptable and that City will not be held liable for any additional time required to respond to a fire alarm due to the location of the Land.

- 5.02 Landowner acknowledges and agrees that when any building or structure on the Land is on fire or may be deemed to be hazardous and likely to take fire or communicate the fire to other buildings, City, through its Fire Chief or designated representative, may do whatever may be deemed necessary by him for the safety and protection of property and citizens when controlling a fire.
- 5.03 Landowner hereby acknowledges, understands and agrees that, City does not in any way assume to act as an insurer of the structures covered under this Agreement or to pay for any damage that may occur as a result of fire, water, or explosion nor does City assume any obligation under the terms of this Firefighting Services Agreement to construct fire stations, purchase fire fighting equipment, or hire manpower. Rather, Landowner agrees and understands that it is not entitled to any greater protection than residents located within the City receive.

ARTICLE VI. TERMINATION

- 6.01 City may terminate this Agreement at any time for Landowner's non-payment of the fire protection fees set out under Article III of this Agreement provided the non-payment continues uncured for a period of ninety (90) days from the date Landowner receives written notice from the City of its failure to pay the required fees. The foregoing notice of cancellation or intention to cancel or terminate this Firefighting Services Agreement shall specifically state
 - (a) the sums then due and owing;
- (b) that the Landowner's failure to make the required payment within ninety (90) days of the date of the written notice shall result in cancellation or termination of this Agreement; and
 - (c) the date upon which the payment must be received by City to prevent cancellation of this Agreement.
- 6.02 Either party may terminate this Agreement, with or without cause, by giving not less than one hundred eighty (180) days written notice of termination to the other party.
- 6.03 If the Services Agreement is terminated for any reason, Landowner may terminate this Agreement upon thirty (30 days written notice to City.
- 6.04 If the Land is annexed by City, this Agreement will automatically terminate.

ARTICLE VII SUBSEQUENT LANDOWNERS

Landowner covenants and agrees to include the following special provisions in any deed or lease of any part of the Land hereafter executed by or on behalf of Landowner:

"This (conveyance or lease, as applicable) is made and accepted subject to the following provisions: (Grantee or lessee, as applicable) hereby assumes and agrees to perform the terms and conditions of that certain Firefighting Services Agreement between the City of San Antonio and Lumbermen's Investment Corporation, of record in the Real Property Records of Bexar County, Texas, as to the parcel hereby (conveyed or leased, as applicable)."

ARTICLE VIII SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

ARTICLE IX NOTICES

9.01 Except as otherwise required, for purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

City of San Antonio

100 Military Plaza, 1st Floor San Antonio, Texas 78207

Attention:

Director of Development Services

With copies to:

City Clerk

100 Military Plaza, 2nd Floor San Antonio, Texas 78205, and

City Attorney

100 Military Plaza, 3rd Floor San Antonio, Texas 78205

LANDOWNER:

Lumbermen's Investment Corporation

5495 Beltline Road, Suite 225

Dallas, Texas 75240

Attention:

President

With a copies to:

Lumbermen's Investment Corporation

1300 S. MoPac Expressway

Austin, Texas 78746

Attention:

General Counsel

Akin Gump Strauss Hauer & Feld LLP

300 Convent, Suite 1500 San Antonio, Texas 78205 Attention: M. Paul Martin

9.02 Notice of change of address by either party must be made in writing delivered to the other party's last known address.

ARTICLE X ENTIRE AGREEMENT

The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto in writing signed by both parties, and in the case of City, approved by action of City Council.

ARTICLE XI LAW APPLICABLE

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is performable in Bexar County, Texas.

ARTICLE XII PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

ARTICLE XIII GENDER

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE XIV CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

ARTICLE XV NO PARTY DEEMED DRAFTER

Each Party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.

ARTICLE XVI USE OF DEFINED TERMS

Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Agreement, exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.

ARTICLE XVII COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document.

[SIGNATURE PAGE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS THEREOF, this Agreement is executed in 200	duplicate originals this day of A.I
CITY OF SAN ANTONIO, TEXAS	LUMBERMEN'S INVESTMENT CORPORATION
BY:	BY:
Terry M. Brechtel City Manager	John Pierret Executive Vice President
ATTEST:	
City Clerk	
APPROVED AS TO FORM:	
City Attorney	

ATTACHMENT

EXHIBIT "A" Description of the Land

EXHIBIT A TO FIREFIGHTING SERVICES AGREEMENT

TRACT ONE

A 1392.7 acre, or 60,666,506 square feet, more or less, tract of land being comprised of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and that 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the Rompel Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 1392.7 acre tract being more fully described as follows:

BEGINNING: At a found 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of

Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the

aforementioned 1394.189 acre tract;

THENCE: N 23°23'37"W, bearings being based of the North American Datum of 1983, from State Plane

Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47"W, 1274.56' by deed, the distance of 1274.56 feet being comprised of this call for 1203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April

of 1987);

THENCE: N 23°30'17"W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet

to a found 1/2" iron rod set in concrete at an angle point;

THENCE: N 23°32'11"W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet

to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, said iron rod also being the southwest corner of a 229.000 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas, (N

25°07'30"W by deed);

THENCE: N 73°12'18"E, departing said east line of Fossil Ridge Subdivision, a distance of 2007.69 feet to a

point;

THENCE: N 01°22'40"W, a distance of 376.50 feet to a point;

THENCE: N 13°37'20"E, a distance of 825.00 feet to a point;

THENCE: N 23°30'23"W, a distance of 400.85 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N65°11'27" W, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of N 00°39'05" E, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N58°53'08" E, a radius of 1000.00 feet, a central angle of 55°55'25", a chord bearing and distance of N 03°09'09" W, 937.77 feet, and an arc length of 976.05 feet to a point;

THENCE:

N 31°06'52"W, a distance of 110.00 feet to a point;

THENCE:

S 58°53'08"W, a distance of 486.65 feet to a point;

THENCE:

Along the arc of a curve to the left, said curve having a radial bearing of S23°53'08" W, a radius of 1000.00 feet, a central angle of 55°00'00", a chord bearing and distance of S 86°23'08" W, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE:

N 66°06'52"W, a distance of 1650.00 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N06°06'52" W, a radius of 1400.00 feet, a central angle of 30°00'00", a chord bearing and distance of N 81°06'52" W, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE:

S 83°53'08"W, a distance of 126.94 feet to a point;

THENCE:

S 23°30'23"E, a distance of 603.61 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1394.189 acre tract being the northeast corner of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract;

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1581.35 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 87°49'00"W, 7167.93' by deed, the distance of 7167.93 feet being comprised of this call for 1581.35 feet, the next call for 1373.99 feet, 4091.02 feet along the north line of the aforementioned 194.2434 acre tract and a distance of 21.92 feet to the old right-of-way line of Bulverde Road which is described in a Bulverde Road right-of-way map dated November of 1985);

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1373.99 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the northwest corner of the 403.9458 acre tract and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 89°24'59"W, along and with the south line of the 1394.189 acre tract and the north line of the 194.2434 acre tract, a distance of 4090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road and at the northwest corner of the said 194.2434;

THENCE:

Along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 10°32'43" W, a distance of 2.67 feet to a point;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 22°37'38", a chord bearing and distance of N 00°46'06"E, 391.97 feet and an arc length of 394.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 12°04'55"E, a distance of 214.65 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly, with a curve to the right, said curve having a radius of 1102.00 feet, a central angle of 30°40'02", a chord bearing and distance of N 27°24'56" E, 582.82 feet, and an arc length of 589.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 42°44'57"E, a distance of 274.54 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of a 135.532 acre tract described in instrument recorded in Volume 5350, Page 2076-2081 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 89°25'08"E, departing the east right-of-way line of Bulverde road, along and with the south line of the 135.532 acre tract, a distance of 5968.30 feet to a found ½" iron rod at the southeast corner of the said 135.532 acre tract:

THENCE: N 23°29'40"W, a distance of 1190.36 feet, (N 25°05'12"W, 3406.40' by deed, the combined deed distance of 3406.40 feet in this call and that of the deed distance of 1064.15 feet quoted in the next call, being comprised of this call of 1190.36 feet, and next two calls of 2783.83 feet, and 494.80 feet), to a found ½" iron rod at the northeast corner of the 135.532 acre tract and the southeast corner of a 1350.297 acre tract recorded in Volume 4859, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°29'40"W, along and with the east line of the 1350.297 acre tract, a distance of 2783.83 feet, (N 25°18'04"W, 1064.15' by deed) to a found ½" iron rod marked MBC at an angle point;

THENCE: N 23°54'32"W, along and with the east line of the 1350.297 acre tract, a distance of 494.80 feet to a found ½" iron rod at the northwest corner of this tract;

THENCE: N 55°13'56"E, along and with the south line of the 1350.297 acre tract, a distance of 346.08 feet to a found ½" iron rod at an angle point;

THENCE: N 55°17'34"E, along and with the south line of the 1350.297 acre tract, a distance of 381.68 feet to a found ½" iron rod at an angle point;

THENCE: N 54°44'11"E, along and with the south line of the 1350.297 acre tract, a distance of 894.23 feet to a found ½" iron rod at an angle point, (N 53°31'36"E, 2026.43' by deed);

THENCE: N 55°46'21"E, along and with the south line of the 1350.297 acre tract, a distance of 403.85 feet to a found iron rod in the northwest corner of a 785.4 acre tract out of a 927.064 acre tract recorded in Volume 5362, Pages 756-764 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 54°16'26"E, departing the south line of the 1350.297 acre tract, along and with the west line of the 785.4 acre tract, a distance of 3325.13 feet to a found iron rod at an angle point, (S 55°52'24"E, 3325.13' by deed);

THENCE: S 54°11'40"E, along and with the west line of the 785.4 acre tract, a distance of 5267.86 feet to a fence post at an angle point, (S 55°47'33"E, 5277.27' by deed);

THENCE: S 50°09'55"E, along and with the west line of the 785.4 acre tract, a distance of 253.64 feet to a found iron rod in the northeast corner of a 51.788 acre tract described in instrument recorded in Volume 7002, Pages 658-662 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

S 03°57'49"E, departing the west line of the 785.4 acre tract, along and with the west line of the 51.788 acre tract, passing at 1048.25 feet a fence post at the southwest corner of the 51.788 acre tract and the northwest corner of a 30.04 acre tract described in instrument recorded in Volume 5362, Pages 1539-1542 of the Official Public Records of Real Property of Bexar County, Texas and continuing along and with the west line of the 30.04 acre tract a total distance of 1479.02 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 05°30'33"E, 1478.86' by deed);

THENCE:

S 08°30'05"E, along and with the west line of the 30.04 acre tract, a distance of 382.99 feet to a found ½" iron rod at an angle point (S 09°56'00"E, 382.42' by deed);

THENCE:

S 01°31'55"W, along and with the west line of the 30.04 acre tract, passing at 396.50 feet a fence post at the southwest corner of the said 30.04 acre tract and the northwest corner of a 24.95 acre tract described in instrument recorded in Volume 4884, Pages 1495-1498 of the Official Public Records of Real Property of Bexar County, Texas, and continuing along and with the west line of the 24.95 acre tract a total distance of 1192.66 feet to a found 5/8" iron rod at the southwest corner of the 24.95 acre tract and the northwest corner of a 185.610 acre tract of land described in instrument recorded in Volume 4525, Pages 164-167 of the Deed Records of Bexar County, Texas, (S 00°10'35"E, 1193.13' by deed);

THENCE:

S 16°01'29"W, along and with the west line of the 185.610 acre tract, a distance of 5051.21 feet, (S 14°18'24"W, 2685.40' and S 14°33'47"W, 2366.39' by deed); to a found ½" iron rod in the north right-of-way line of Evans Road, a 110 foot right-of-way;

THENCE:

N 77°10'31"W, along and with the north right-of-way line of Evans Road, passing at 1600.26 feet the southwest corner of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and continuing for a total distance of 2134.38 feet to a found ½" iron rod at a point of curvature;

THENCE:

Northwesterly, along the arc of a curve to the right, said curve having a radius of 2578.39 feet, a central angle of 8°52'15", a chord bearing and distance of N 72°44'24" W, 398.80 feet, and an arc length of 399.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

THENCE:

N 68°18'16"W, a distance of 213.96 feet to the POINT OF BEGINNING and containing 1392.7 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

October 22, 2002

JOB No.:

3538-24

DOC.ID.:

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TRACT TWO

A 229.0 acre, or 9,973,288 square feet, more or less, tract of land being comprised of that 229.00 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 229.0 acre tract being more fully described as follows:

COMMENCING: At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, and a corner of a 1,394.189 acre tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°23'37" W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1,203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47" W, 1,274.56' by deed, the distance of 1,274.56 feet being comprised of this call for 1,203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

N 23°30'17" W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

N 23°32'11" W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to the POINT OF BEGINNING at a found ½" iron rod with a yellow cap marked "Pape-Dawson", being the southwest corner of the 229.0 acre tract herein described;

N 23°31'11" W, along and with the east line of Fossil Ridge Subdivision, passing at 104.93 feet a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of Lot 17, Block 4 of Fossil Ridge Subdivision, and continuing for a total distance of 1,289.32 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of said Fossil Ridge Subdivision;

N23°31'11" W, along and with the east line of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract, a distance of 2,726.01 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1,394.189 acre tract;

THENCE: N 23°30'23" W, a distance of 603.61 feet to a point;

THENCE:

THENCE:

THENCE:

THENCE:

THENCE: N 83°53'08" E, a distance of 126.94 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 06°06'52" E, a radius of 1,400.00 feet, a central angle of 30°00'00", a chord bearing and distance of S 81°06'52" E, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE: S 66°06'52" E, a distance of 1,650.00 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N 23°53'08" E, a radius of 1,000.00 feet, a central angle of 55°00'00", a chord bearing and distance of N 86°23'08" E, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE: N 58°53'08" E, a distance of 486.65 feet to a point;

THENCE: S 31°06'52" E, a distance of 110.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 58°53'08" W, a radius

of 1,000.00 feet, a central angle of 55°55'25", a chord bearing and distance of S 03°09'09" E, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of S 5°11'27" E, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of S00°39'05" W, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: S 23°30'23" E, a distance of 400.85 feet to a point;

THENCE: S 13°37'20" W, a distance of 825.00 feet to a point;

THENCE: S 01°22'40" E, a distance of 376.50 feet to a point;

THENCE: S 73°12'18" W, a distance of 2,007.69 feet to the POINT OF BEGINNING and containing 229.0

acres of land in Bexar County, Texas. Said tract being described in accordance with a survey

prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 22, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-A3-229

TRACT THREE

A 187.20 acre, or 8,154,390 square feet, more or less, tract of land out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 in Bexar County, Texas. Said 187.20 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road, an 86-foot right-of-way, being at a northwest corner of Fossil Creek Subdivision, Unit 1, recorded in Volume 9541, Pages 177-178 of the Deed and Plat Records of Bexar County, Texas, and the southernmost corner of the herein described tract;

THENCE:

Northwesterly, along and with the east right-of-way line of Bulverde Road with a curve to the left, having a radial bearing of S 67°45'32" W, a radius of 1,313.00 feet, a central angle of 22°59'41", a chord bearing and distance of N 33°44'18" W, 523.42 feet and an arc length of 526.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 1.511 acre tract known as Parcel 12E, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 1.511-acre tract the following bearings and distances;

N 04°41'26" W, a distance of 198.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 21°13'51" W, a distance of 59.48 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 44°11'00" W, a distance of 83.79 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 63°24'38" W, a distance of 432.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 70°15'43" W, a distance of 71.04 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 79°40'49" W, a distance of 370.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 1.511-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 58°46'37" W, a distance of 310.51 feet, to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 1002.00 feet, a central angle of 34°57'20', a chord bearing and distance of N 41°17'57" W, 601.87 feet and an arc length of 611.31 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 23°49'18" W, a distance of 788.47 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northwesterly with a curve to the left, said curve having a radius of 1,475.00 feet, a central angle of 14°53'03", a chord bearing and distance of N 31°15'49" W, 382.10 feet and an arc length of

383.17 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 0.034 acre tract known as Parcel 12G, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 0.034-acre tract the following bearings and distances;

N 30°24'18" W, a distance of 110.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 64°10'27" W, a distance of 52.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 0.034-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 41°59'45" W, a distance of 123.38 feet to a found 1/2" iron rod at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 31°27'02", a chord bearing and distance of N 26°16'14" W, 541.51 feet and an arc length of 548.37 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 10°32'43" W, a distance of 219.57 feet to a found ½" iron rod at the northwest corner of the aforementioned 194.2434 acre tract, the west corner of a 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas and at an angle point;

THENCE:

N 89°24'59" E, departing the east right-of-way line of Bulverde road, along and with the south line of the 1,394.189 acre tract, a distance of 4,090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" at the northwest corner of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 19°21'43" W, along and with the west line of the 403.9458 acre tract, a distance of 1,027.05 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S17°48'10" W, 1,026.69 feet by deed);

THENCE:

S 89°26'18" W, along and with the 403.9458 acre tract, a distance of 480.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

THENCE:

S 00°19'34" E, along and with the 403.9458 acre tract, passing at 1,437.69 feet a found 60 penny nail at the northwest corner of Fossil Creek Subdivision, Unit 1, and continuing for a total distance of 2,422.64 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 01°56'52" E, 2,422.66 feet by deed);

THENCE:

S 60°02'12" W, along and with Fossil Creek Subdivision, Unit 1, a distance of 500.02 feet to the POINT OF BEGINNING and containing 187.20 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 18, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-a1-194

TRACT FOUR

A 785.4 acre, or 34,210,000 square feet, tract of land being the remainder of that 927.064 acre tract described in deed from Henry Van de Walle et al to Dan F. Parman in Volume 3089, Page 1393-1399 of the Official Public Records of Real Property of Bexar County, Texas, and conveyed to Peter Wolverton in Volume 5382, Page 756-764 of the Official Public Records of Real Property of Bexar County, Texas out of the E. Martin Survey 89, Abstract 524, County Block 4909, the E. Gonzales Survey 441, Abstract 288, County Block 4902, the Salvador Flores Survey No. 440, Abstract 243, County Block 4907, the Jil Jimenez Survey 358, Abstract 821(Bexar) 682(Comal), County Block 4905, the W. H. Hughes Survey No. 478, Abstract 345(Bexar) 364(Comal), County Block 4906, and the F. Valdez Survey No. 478½, Abstract 787, County Block 4908, in Bexar and Comal Counties, Texas. Said 785.4 acres being more particularly described as follows:

BEGINNING:

at a set ½" iron rod with yellow cap marked "Pape-Dawson" at the southernmost corner of this tract, on the south line of said 927.064 acre tract, at the southwest corner of a 99.900 acre tract out of said 927.064 acre tract, the southwest corner of said 99.900 acre tract and said 927.064 acre tract being S 64°40'20" E, a distance of 780.00 feet to a found ½" iron rod, S 65°48'16" E, a distance of 1696.16 feet to a found ½" iron rod;

THENCE:

Along and with the south line of said 927.064 acre tract the following calls and distances:

N 65°40'20"W, at 29.25 feet passing the northeast corner of a 51.788 acre tract conveyed to John B. Webb in Volume 7002, Page 658-682 of the Official Public Records of Real Property of Bexar County, Texas, and continuing with the south line of said 927.064 acre tract for a total distance of 1636.13 feet to a found ½" iron rod;

N 49°15'20"W, a distance of 1274.99 feet to a found ½" iron rod at the northwest corner of said 51.788 acre tract, the northeast corner of a 1394.189 acre tract conveyed to Lumbermans Investment Corporation in Volume 5792, Page 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 50°51'38" W, 1276.71 feet;

N 50°09'55"W, a distance of 253.64 feet to a found 1/2" iron rod, by deed N 51°46'13"W, 246.49 feet;

N 54°11'40"W, a distance of 5267.86 feet to a found ½" iron rod in a 30" Live Oak, by deed N 55°47'33" W, 5276.83 feet;

N 54°16'26"W, a distance of 3325.13 feet to a found ½" iron rod at the southwest corner of the said 927.064 acres, the northwest corner of said 1394.189 acre tract, on the southeast line of a 1350.297 acre tract conveyed to the Poerner Family Partnership in Volume 4869, Page 292-312 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 55°52'19" W, 3325.35 feet;

THENCE:

N 54°59'55"E, a distance of 2448.93 feet to a found ½" iron rod at the northwest corner of said 927.064 acre tract, by deed N 53°24'02" E, 2449.06 feet;

THENCE:

Continuing with the north line of said 927.064 acre tract the following calls and distances:

S 41°19'21"E, a distance of 1536.97 feet to a found 1/2" iron rod, by deed S 42°55'36" E, 1536.87 feet;

N 79°13'24"E, a distance of 849.81 feet to a found 1/2" iron rod, by deed N 77°37'30" E, 849.79 feet;

S 80°58'59"E, a distance of 1577.28 feet to a found ½" iron rod in 18" Cedar, by deed S 82°36'03" E, 1577.43 feet;

S 19°36'38"E, a distance of 238.56 feet to a found ½" iron rod in 17" Cedar, by deed S 21°16'00" E, 238.76 feet;

S 31°12'31"E, a distance of 408.74 feet to a found ½" iron rod in 20" Cedar, by deed S 32°46'48" E, 408.62 feet;

THENCE:

S 38°28'19"E, a distance of 513.61 feet to a found ½" iron rod at the north corner of a 7.312 acre tract conveyed to John L. and Mary H. McClung in Volume 6934, Page 826-829 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of that 40.955 acre tract out of said 927.064 acre tract conveyed to John O. Spice in Volume 6932, Page 279-286 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

Along and with the south line of said 40.955 acre tract the following calls and distances:

S 76°31'41"W, a distance of 408.43 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S74°57'31" W, 408.99 feet;

S 09°28'05"E, a distance of 244.99 feet to a found 1/2" iron rod, by deed S 11°10'57"E, 245.63 feet;

S 44°28'05"E, a distance of 310.27 feet to a found ½" iron rod, by deed S 46°10'57" E, a distance of 310.00 feet;

S 59°36'52"E, a distance of 289.82 feet to a found 1/2" iron rod, by deed S 61°10'57" E, 290.07 feet;

S 88°19'58"E, a distance of 1558.63 feet to a found 1/2" iron rod, by deed East 1558.42 feet;

S 66°02'47"E, a distance of 318.27 feet to a found ½" iron rod, by deed S 67°40'05" E, 318.43 feet;

S 88°18'36"E, a distance of 895.37 feet to a found 1/2" iron rod, by deed East, 894.76 feet;

N 74°47'26"E, a distance of 418.72 feet to a found 1/2" iron rod, bent, by deed N 73°10'20" E, 417.94 feet;

S 88°07'27"E, at 626 feet passing the centerline of the Cibolo Creek and continuing for a total distance of 954.80 feet to a found ½" iron rod at the southeast corner of said 40.955 acre tract, on the east line of said 927.064 acre tract;

THENCE:

Along and with the east line of said 927.064 acre tract the following calls and distances:

S 16°12'32"E, a distance of 527.73 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of said Cibolo Creek, by deed S 17°50'29" E;

THENCE:

S 63°21'01"E, a distance of 311.99 feet to a set ½" iron rod with cap marked "Pape-Dawson" on the northeast corner of the said E. Martin Survey, on the south line of the said W. H. Hughes Survey 478, from which a 60" Live Oak bears N 43°E, a distance of 32.6 feet (11 ¾ varas) called a double 20" Live Oak in the deed of 392.0 acres from Dierks to 4D Bar Ranch recorded in Document 98-06026868 of the Official Records of Comal County, by deed S63°15'29"E, 328.78 feet;

THENCE:

S 10°13'15"E, along and with the west line of said 392.0 acres, called as southerly line of the Joseph Thompson Survey 758, a distance of 2453.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of the Cibolo Creek, the northeast corner of the aforementioned 99.900 acre tract, by deed S 11°45'29" E;

THENCE:

Along and with the north and west line of said 99.900 acre tract the following calls and distances:

S 79°50'41" W, a distance of 1149.13 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S78°14'31"W, 1150.73 feet;

S 08°48'58" W, a distance of 1577.45 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S 07°12'48" W, 1577.45 feet;

THENCE:

S 24°18'58"W, a distance of 249.84 feet, by deed S 22°42'48" W, 250.00 feet, to the POINT OF BEGINNING and containing 785.4 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 19, 2000

JOB No.: 9988-00

DOC.ID.: N:\SURVEY00\0-10000\9988-00\9988-00.doc

TRACT FIVE

A 2.858 acre, or 124,493 square feet, more or less, tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W. M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 2.858 acre tract being more fully described as follows:

BEGINNING:

At a set ½" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center line Station 39+03.31, at the most southerly northeast corner of Parcel 12F, a 1.904 acre tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE:

Departing the west right-of-way line of Bulverde Road, along and with the east line of Parcel 12F the following bearings and distances;

S 87°28'16"W, a distance of 418.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 73°07'57"W, a distance of 151.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 30°12'08"W, a distance of 113.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 01°05'28"E, a distance of 97.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 33°47'18"E, a distance of 229.50 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the west right-of-way line of said Bulverde Road;

THENCE:

Northeasterly, along and with the west right-of-way line of Bulverde Road, with a curve to the left, said curve having a radial bearing of N 55°47'04" E, a radius of 1088.00 feet, a central angle of 24°33'41", a chord bearing and distance of S 46°29'46" E, 462.84 feet and an arc length of 466.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 58°46'37"E, along and with the west right-of-way line of Bulverde Road, a distance of 181.34 feet to the POINT OF BEGINNING and containing 2.858 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

TRACT SIX

A 0.4893 acre, or 21,313 square feet, more or less tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 0.4893 acre tract being more fully described as follows:

BEGINNING At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of

Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center

line Station 21+68.58 at the southeast corner of this tract;

THENCE: S 60°26'26"W, departing the west right-of-way line of Bulverde Road, a distance of 26.83 feet to a

set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the east line of Parcel 12D, a 0.769 acre

tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE: Along and with the east line of Parcel 12D, the following bearings and distances;

N 32°32'25"W, a distance of 52.11 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 47°54'19"W, a distance of 128.87 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 27°44'21"W, a distance of 98.42 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 04°41'26"W, a distance of 135.59 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" in the west right-of-way line of Bulverde Road;

THENCE: Southeasterly, along and with the west right-of-way line of Bulverde Road, along the arc of a curve

to the right, said curve having a radial bearing of S49°42'58" W, a radius of 1227.00 feet, a central angle of 18°34'00", a chord bearing and distance of S 31°00'02" E, 395.87 feet, and an arc length of 397.61 feet to the POINT OF BEGINNING and containing 0.4893 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the

ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

EXHIBIT C

EXHIBIT C TO AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

TRACT ONE

A 1392.7 acre, or 60,666,506 square feet, more or less, tract of land being comprised of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and that 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the Rompel Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 1392.7 acre tract being more fully described as follows:

BEGINNING: At a found 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of

Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the

aforementioned 1394.189 acre tract;

THENCE: N 23°23'37"W, bearings being based of the North American Datum of 1983, from State Plane

Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47"W, 1274.56' by deed, the distance of 1274.56 feet being comprised of this call for 1203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April

of 1987);

THENCE: N 23°30'17"W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet

to a found 1/2" iron rod set in concrete at an angle point;

THENCE: N 23°32'11"W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet

to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, said iron rod also being the southwest corner of a 229.000 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas, (N

25°07'30"W by deed);

THENCE: N 73°12'18"E, departing said east line of Fossil Ridge Subdivision, a distance of 2007.69 feet to a

point;

THENCE: N 01°22'40"W, a distance of 376.50 feet to a point;

THENCE: N 13°37'20"E, a distance of 825.00 feet to a point;

THENCE: N 23°30'23"W, a distance of 400.85 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N65°11'27" W, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of N 00°39'05" E, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N58°53'08" E, a radius of 1000.00 feet, a central angle of 55°55'25", a chord bearing and distance of N 03°09'09" W, 937.77 feet, and an arc length of 976.05 feet to a point;

THENCE:

N 31°06'52"W, a distance of 110.00 feet to a point;

THENCE:

S 58°53'08"W, a distance of 486.65 feet to a point;

THENCE:

Along the arc of a curve to the left, said curve having a radial bearing of S23°53'08" W, a radius of 1000.00 feet, a central angle of 55°00'00", a chord bearing and distance of S 86°23'08" W, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE:

N 66°06'52"W, a distance of 1650.00 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N06°06'52" W, a radius of 1400.00 feet, a central angle of 30°00'00", a chord bearing and distance of N 81°06'52" W, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE:

S 83°53'08"W, a distance of 126.94 feet to a point;

THENCE:

S 23°30'23"E, a distance of 603.61 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1394.189 acre tract being the northeast corner of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract;

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1581.35 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 87°49'00"W, 7167.93' by deed, the distance of 7167.93 feet being comprised of this call for 1581.35 feet, the next call for 1373.99 feet, 4091.02 feet along the north line of the aforementioned 194.2434 acre tract and a distance of 21.92 feet to the old right-of-way line of Bulverde Road which is described in a Bulverde Road right-of-way map dated November of 1985);

THENCE:

S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1373.99 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the northwest corner of the 403.9458 acre tract and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 89°24'59"W, along and with the south line of the 1394.189 acre tract and the north line of the 194.2434 acre tract, a distance of 4090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road and at the northwest corner of the said 194.2434;

THENCE:

Along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 10°32'43" W, a distance of 2.67 feet to a point;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 22°37'38", a chord bearing and distance of N 00°46'06"E, 391.97 feet and an arc length of 394.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 12°04'55"E, a distance of 214.65 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly, with a curve to the right, said curve having a radius of 1102.00 feet, a central angle of 30°40'02", a chord bearing and distance of N 27°24'56" E, 582.82 feet, and an arc length of 589.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 42°44'57"E, a distance of 274.54 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of a 135.532 acre tract described in instrument recorded in Volume 5350, Page 2076-2081 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 89°25'08"E, departing the east right-of-way line of Bulverde road, along and with the south line of the 135.532 acre tract, a distance of 5968.30 feet to a found ½" iron rod at the southeast corner of the said 135.532 acre tract:

THENCE: N 23°29'40"W, a distance of 1190.36 feet, (N 25°05'12"W, 3406.40' by deed, the combined deed distance of 3406.40 feet in this call and that of the deed distance of 1064.15 feet quoted in the next call, being comprised of this call of 1190.36 feet, and next two calls of 2783.83 feet, and 494.80 feet), to a found ½" iron rod at the northeast corner of the 135.532 acre tract and the southeast corner of a 1350.297 acre tract recorded in Volume 4859, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°29'40"W, along and with the east line of the 1350.297 acre tract, a distance of 2783.83 feet, (N 25°18'04"W, 1064.15' by deed) to a found ½" iron rod marked MBC at an angle point;

THENCE: N 23°54'32"W, along and with the east line of the 1350.297 acre tract, a distance of 494.80 feet to a found ½" iron rod at the northwest corner of this tract;

THENCE: N 55°13'56"E, along and with the south line of the 1350.297 acre tract, a distance of 346.08 feet to a found ½" iron rod at an angle point;

THENCE: N 55°17'34"E, along and with the south line of the 1350.297 acre tract, a distance of 381.68 feet to a found ½" iron rod at an angle point;

THENCE: N 54°44'11"E, along and with the south line of the 1350.297 acre tract, a distance of 894.23 feet to a found ½" iron rod at an angle point, (N 53°31'36"E, 2026.43' by deed);

THENCE: N 55°46'21"E, along and with the south line of the 1350.297 acre tract, a distance of 403.85 feet to a found iron rod in the northwest corner of a 785.4 acre tract out of a 927.064 acre tract recorded in Volume 5362, Pages 756-764 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 54°16'26"E, departing the south line of the 1350.297 acre tract, along and with the west line of the 785.4 acre tract, a distance of 3325.13 feet to a found iron rod at an angle point, (S 55°52'24"E, 3325.13' by deed);

THENCE: S 54°11'40"E, along and with the west line of the 785.4 acre tract, a distance of 5267.86 feet to a fence post at an angle point, (S 55°47'33"E, 5277.27' by deed);

THENCE: S 50°09'55"E, along and with the west line of the 785.4 acre tract, a distance of 253.64 feet to a found iron rod in the northeast corner of a 51.788 acre tract described in instrument recorded in Volume 7002, Pages 658-662 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 03°57'49"E, departing the west line of the 785.4 acre tract, along and with the west line of the 51.788 acre tract, passing at 1048.25 feet a fence post at the southwest corner of the 51.788 acre tract and the northwest corner of a 30.04 acre tract described in instrument recorded in Volume 5362, Pages 1539-1542 of the Official Public Records of Real Property of Bexar County, Texas and continuing along and with the west line of the 30.04 acre tract a total distance of 1479.02 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 05°30'33"E, 1478.86' by deed);

THENCE:

S 08°30'05"E, along and with the west line of the 30.04 acre tract, a distance of 382.99 feet to a found ½" iron rod at an angle point (S 09°56'00"E, 382.42' by deed);

THENCE:

S 01°31'55"W, along and with the west line of the 30.04 acre tract, passing at 396.50 feet a fence post at the southwest corner of the said 30.04 acre tract and the northwest corner of a 24.95 acre tract described in instrument recorded in Volume 4884, Pages 1495-1498 of the Official Public Records of Real Property of Bexar County, Texas, and continuing along and with the west line of the 24.95 acre tract a total distance of 1192.66 feet to a found 5/8" iron rod at the southwest corner of the 24.95 acre tract and the northwest corner of a 185.610 acre tract of land described in instrument recorded in Volume 4525, Pages 164-167 of the Deed Records of Bexar County, Texas, (S 00°10'35"E, 1193.13' by deed);

THENCE:

S 16°01'29"W, along and with the west line of the 185.610 acre tract, a distance of 5051.21 feet, (S 14°18'24"W, 2685.40' and S 14°33'47"W, 2366.39' by deed); to a found ½" iron rod in the north right-of-way line of Evans Road, a 110 foot right-of-way;

THENCE:

N 77°10'31"W, along and with the north right-of-way line of Evans Road, passing at 1600.26 feet the southwest corner of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and continuing for a total distance of 2134.38 feet to a found ½" iron rod at a point of curvature;

THENCE:

Northwesterly, along the arc of a curve to the right, said curve having a radius of 2578.39 feet, a central angle of 8°52'15", a chord bearing and distance of N 72°44'24" W, 398.80 feet, and an arc length of 399.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

THENCE:

N 68°18'16"W, a distance of 213.96 feet to the POINT OF BEGINNING and containing 1392.7 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

October 22, 2002

JOB No.:

3538-24

DOC.ID.:

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TRACT TWO

A 229.0 acre, or 9,973,288 square feet, more or less, tract of land being comprised of that 229.00 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 229.0 acre tract being more fully described as follows:

COMMENCING: At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, and a corner of a 1,394.189 acre tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°23'37" W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1,203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47" W, 1,274.56' by deed, the distance of 1,274.56 feet being comprised of this call for 1,203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE: N 23°30'17" W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

N 23°32'11" W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to the POINT OF BEGINNING at a found ½" iron rod with a yellow cap marked "Pape-Dawson", being the southwest corner of the 229.0 acre tract herein described;

N 23°31'11" W, along and with the east line of Fossil Ridge Subdivision, passing at 104.93 feet a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of Lot 17, Block 4 of Fossil Ridge Subdivision, and continuing for a total distance of 1,289.32 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of said Fossil Ridge Subdivision;

THENCE: N23°31'11" W, along and with the east line of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract, a distance of 2,726.01 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1,394.189 acre tract;

THENCE: N 23°30'23" W, a distance of 603.61 feet to a point;

THENCE:

THENCE:

THENCE:

THENCE: N 83°53'08" E, a distance of 126.94 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 06°06'52" E, a radius of 1,400.00 feet, a central angle of 30°00'00", a chord bearing and distance of S 81°06'52" E, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE: S 66°06'52" E, a distance of 1,650.00 feet to a point;

Along the arc of a curve to the left, said curve having a radial bearing of N 23°53'08" E, a radius of 1,000.00 feet, a central angle of 55°00'00", a chord bearing and distance of N 86°23'08" E, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE: N 58°53'08" E, a distance of 486.65 feet to a point;

THENCE: S 31°06'52" E, a distance of 110.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 58°53'08" W, a radius

of 1,000.00 feet, a central angle of 55°55'25", a chord bearing and distance of S 03°09'09" E, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of S 5°11'27" E, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of S00°39'05" W, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: S 23°30'23" E, a distance of 400.85 feet to a point;

THENCE: S 13°37'20" W, a distance of 825.00 feet to a point;

THENCE: S 01°22'40" E, a distance of 376.50 feet to a point;

THENCE: S 73°12'18" W, a distance of 2,007.69 feet to the POINT OF BEGINNING and containing 229.0

acres of land in Bexar County, Texas. Said tract being described in accordance with a survey

prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 22, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-A3-229

TRACT THREE

A 187.20 acre, or 8,154,390 square feet, more or less, tract of land out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 in Bexar County, Texas. Said 187.20 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road, an 86-foot right-of-way, being at a northwest corner of Fossil Creek Subdivision, Unit 1, recorded in Volume 9541, Pages 177-178 of the Deed and Plat Records of Bexar County, Texas, and the southernmost corner of the herein described tract;

THENCE:

Northwesterly, along and with the east right-of-way line of Bulverde Road with a curve to the left, having a radial bearing of S 67°45'32" W, a radius of 1,313.00 feet, a central angle of 22°59'41", a chord bearing and distance of N 33°44'18" W, 523.42 feet and an arc length of 526.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 1.511 acre tract known as Parcel 12E, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 1.511-acre tract the following bearings and distances;

N 04°41'26" W, a distance of 198.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 21°13'51" W, a distance of 59.48 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 44°11'00" W, a distance of 83.79 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 63°24'38" W, a distance of 432.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 70°15'43" W, a distance of 71.04 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 79°40'49" W, a distance of 370.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 1.511-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 58°46'37" W, a distance of 310.51 feet, to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 1002.00 feet, a central angle of 34°57'20', a chord bearing and distance of N 41°17'57" W, 601.87 feet and an arc length of 611.31 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 23°49'18" W, a distance of 788.47 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northwesterly with a curve to the left, said curve having a radius of 1,475.00 feet, a central angle of 14°53'03", a chord bearing and distance of N 31°15'49" W, 382.10 feet and an arc length of

383.17 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 0.034 acre tract known as Parcel 12G, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 0.034-acre tract the following bearings and distances;

N 30°24'18" W, a distance of 110.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 64°10'27" W, a distance of 52.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 0.034-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 41°59'45" W, a distance of 123.38 feet to a found 1/2" iron rod at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 31°27'02", a chord bearing and distance of N 26°16'14" W, 541.51 feet and an arc length of 548.37 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 10°32'43" W, a distance of 219.57 feet to a found ½" iron rod at the northwest corner of the aforementioned 194.2434 acre tract, the west corner of a 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas and at an angle point;

THENCE:

N 89°24'59" E, departing the east right-of-way line of Bulverde road, along and with the south line of the 1,394.189 acre tract, a distance of 4,090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" at the northwest corner of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 19°21'43" W, along and with the west line of the 403.9458 acre tract, a distance of 1,027.05 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S17°48'10" W, 1,026.69 feet by deed);

THENCE:

S 89°26'18" W, along and with the 403.9458 acre tract, a distance of 480.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

THENCE:

S 00°19'34" E, along and with the 403.9458 acre tract, passing at 1,437.69 feet a found 60 penny nail at the northwest corner of Fossil Creek Subdivision, Unit 1, and continuing for a total distance of 2,422.64 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 01°56'52" E, 2,422.66 feet by deed);

THENCE:

S 60°02'12" W, along and with Fossil Creek Subdivision, Unit 1, a distance of 500.02 feet to the POINT OF BEGINNING and containing 187.20 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 18, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-a1-194

TRACT FOUR

A 785.4 acre, or 34,210,000 square feet, tract of land being the remainder of that 927.064 acre tract described in deed from Henry Van de Walle et al to Dan F. Parman in Volume 3089, Page 1393-1399 of the Official Public Records of Real Property of Bexar County, Texas, and conveyed to Peter Wolverton in Volume 5382, Page 756-764 of the Official Public Records of Real Property of Bexar County, Texas out of the E. Martin Survey 89, Abstract 524, County Block 4909, the E. Gonzales Survey 441, Abstract 288, County Block 4902, the Salvador Flores Survey No. 440, Abstract 243, County Block 4907, the Jil Jimenez Survey 358, Abstract 821(Bexar) 682(Comal), County Block 4905, the W. H. Hughes Survey No. 478, Abstract 345(Bexar) 364(Comal), County Block 4906, and the F. Valdez Survey No. 478½, Abstract 787, County Block 4908, in Bexar and Comal Counties, Texas. Said 785.4 acres being more particularly described as follows:

BEGINNING:

at a set ½" iron rod with yellow cap marked "Pape-Dawson" at the southernmost corner of this tract, on the south line of said 927.064 acre tract, at the southwest corner of a 99.900 acre tract out of said 927.064 acre tract, the southwest corner of said 99.900 acre tract and said 927.064 acre tract being S 64°40'20" E, a distance of 780.00 feet to a found ½" iron rod, S 65°48'16" E, a distance of 1696.16 feet to a found ½" iron rod;

THENCE:

Along and with the south line of said 927.064 acre tract the following calls and distances:

N 65°40'20"W, at 29.25 feet passing the northeast corner of a 51.788 acre tract conveyed to John B. Webb in Volume 7002, Page 658-682 of the Official Public Records of Real Property of Bexar County, Texas, and continuing with the south line of said 927.064 acre tract for a total distance of 1636.13 feet to a found ½" iron rod;

N 49°15'20"W, a distance of 1274.99 feet to a found ½" iron rod at the northwest corner of said 51.788 acre tract, the northeast corner of a 1394.189 acre tract conveyed to Lumbermans Investment Corporation in Volume 5792, Page 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 50°51'38" W, 1276.71 feet;

N 50°09'55"W, a distance of 253.64 feet to a found 1/2" iron rod, by deed N 51°46'13"W, 246.49 feet;

N 54°11'40"W, a distance of 5267.86 feet to a found ½" iron rod in a 30" Live Oak, by deed N 55°47'33" W, 5276.83 feet;

N 54°16'26"W, a distance of 3325.13 feet to a found ½" iron rod at the southwest corner of the said 927.064 acres, the northwest corner of said 1394.189 acre tract, on the southeast line of a 1350.297 acre tract conveyed to the Poerner Family Partnership in Volume 4869, Page 292-312 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 55°52'19" W, 3325.35 feet;

THENCE:

N 54°59'55"E, a distance of 2448.93 feet to a found ½" iron rod at the northwest corner of said 927.064 acre tract, by deed N 53°24'02" E, 2449.06 feet;

THENCE:

Continuing with the north line of said 927.064 acre tract the following calls and distances:

S 41°19'21"E, a distance of 1536.97 feet to a found ½" iron rod, by deed S 42°55'36" E, 1536.87 feet;

N 79°13'24"E, a distance of 849.81 feet to a found ½" iron rod, by deed N 77°37'30" E, 849.79 feet;

S 80°58'59"E, a distance of 1577.28 feet to a found ½" iron rod in 18" Cedar, by deed S 82°36'03" E, 1577.43 feet;

S 19°36'38"E, a distance of 238.56 feet to a found ½" iron rod in 17" Cedar, by deed S 21°16'00" E, 238.76 feet;

S 31°12'31"E, a distance of 408.74 feet to a found ½" iron rod in 20" Cedar, by deed S 32°46'48" E, 408.62 feet;

THENCE:

S 38°28'19"E, a distance of 513.61 feet to a found ½" iron rod at the north corner of a 7.312 acre tract conveyed to John L. and Mary H. McClung in Volume 6934, Page 826-829 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of that 40.955 acre tract out of said 927.064 acre tract conveyed to John O. Spice in Volume 6932, Page 279-286 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

Along and with the south line of said 40.955 acre tract the following calls and distances:

S 76°31'41"W, a distance of 408.43 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S74°57'31" W, 408.99 feet;

S 09°28'05"E, a distance of 244.99 feet to a found 1/2" iron rod, by deed S 11°10'57"E, 245.63 feet;

S 44°28'05"E, a distance of 310.27 feet to a found ½" iron rod, by deed S 46°10'57" E, a distance of 310.00 feet;

S 59°36'52"E, a distance of 289.82 feet to a found ½" iron rod, by deed S 61°10'57" E, 290.07 feet;

S 88°19'58"E, a distance of 1558.63 feet to a found 1/2" iron rod, by deed East 1558.42 feet;

S 66°02'47"E, a distance of 318.27 feet to a found ½" iron rod, by deed S 67°40'05" E, 318.43 feet;

S 88°18'36"E, a distance of 895.37 feet to a found \(\frac{1}{2} \)" iron rod, by deed East, 894.76 feet;

N 74°47'26"E, a distance of 418.72 feet to a found ½" iron rod, bent, by deed N 73°10'20" E, 417.94 feet;

S 88°07'27"E, at 626 feet passing the centerline of the Cibolo Creek and continuing for a total distance of 954.80 feet to a found ½" iron rod at the southeast corner of said 40.955 acre tract, on the east line of said 927.064 acre tract;

THENCE:

Along and with the east line of said 927.064 acre tract the following calls and distances:

S 16°12'32"E, a distance of 527.73 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of said Cibolo Creek, by deed S 17°50'29" E;

THENCE:

S 63°21'01"E, a distance of 311.99 feet to a set ½" iron rod with cap marked "Pape-Dawson" on the northeast corner of the said E. Martin Survey, on the south line of the said W. H. Hughes Survey 478, from which a 60" Live Oak bears N 43°E, a distance of 32.6 feet (11 ¾ varas) called a double 20" Live Oak in the deed of 392.0 acres from Dierks to 4D Bar Ranch recorded in Document 98-06026868 of the Official Records of Comal County, by deed S63°15'29"E, 328.78 feet;

THENCE:

S 10°13'15"E, along and with the west line of said 392.0 acres, called as southerly line of the Joseph Thompson Survey 758, a distance of 2453.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of the Cibolo Creek, the northeast corner of the aforementioned 99.900 acre tract, by deed S 11°45'29" E;

THENCE:

Along and with the north and west line of said 99.900 acre tract the following calls and distances:

S 79°50'41" W, a distance of 1149.13 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S78°14'31"W, 1150.73 feet;

S 08°48'58" W, a distance of 1577.45 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S 07°12'48" W, 1577.45 feet;

THENCE:

S 24°18'58"W, a distance of 249.84 feet, by deed S 22°42'48" W, 250.00 feet, to the POINT OF BEGINNING and containing 785.4 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 19, 2000

JOB No.: 9988-00

DOC.ID.: N:\SURVEY00\0-10000\9988-00\9988-00.doc

TRACT FIVE

A 2.858 acre, or 124,493 square feet, more or less, tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W. M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 2.858 acre tract being more fully described as follows:

BEGINNING:

At a set ½" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center line Station 39+03.31, at the most southerly northeast corner of Parcel 12F, a 1.904 acre tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE:

Departing the west right-of-way line of Bulverde Road, along and with the east line of Parcel 12F the following bearings and distances;

S 87°28'16"W, a distance of 418.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 73°07'57"W, a distance of 151.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 30°12'08"W, a distance of 113.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 01°05'28"E, a distance of 97.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 33°47'18"E, a distance of 229.50 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the west right-of-way line of said Bulverde Road;

THENCE:

Northeasterly, along and with the west right-of-way line of Bulverde Road, with a curve to the left, said curve having a radial bearing of N 55°47'04" E, a radius of 1088.00 feet, a central angle of 24°33'41", a chord bearing and distance of S 46°29'46" E, 462.84 feet and an arc length of 466.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 58°46'37"E, along and with the west right-of-way line of Bulverde Road, a distance of 181.34 feet to the POINT OF BEGINNING and containing 2.858 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

TRACT SIX

A 0.4893 acre, or 21,313 square feet, more or less tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 0.4893 acre tract being more fully described as follows:

BEGINNING At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of

Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center

line Station 21+68.58 at the southeast corner of this tract;

THENCE: S 60°26'26"W, departing the west right-of-way line of Bulverde Road, a distance of 26.83 feet to a

set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the east line of Parcel 12D, a 0.769 acre

tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE: Along and with the east line of Parcel 12D, the following bearings and distances;

N 32°32'25"W, a distance of 52.11 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 47°54'19"W, a distance of 128.87 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 27°44'21"W, a distance of 98.42 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 04°41'26"W, a distance of 135.59 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" in the west right-of-way line of Bulverde Road;

THENCE: Southeasterly, along and with the west right-of-way line of Bulverde Road, along the arc of a curve

to the right, said curve having a radial bearing of S49°42'58" W, a radius of 1227.00 feet, a central angle of 18°34'00", a chord bearing and distance of S 31°00'02" E, 395.87 feet, and an arc length of 397.61 feet to the POINT OF BEGINNING and containing 0.4893 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the

ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

EXHIBIT D

EXHIBIT "D" TO SERVICES AGREEMENT IN LIEU OF ANNEXATION

LANDOWNER'S CONSENT TO ANNEXATION

This LANDOWNER'S CONSENT TO ANNEXATION (this "Consent") is made as of the Effective Date (herein defined) by LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation ("Landowner"), to and for the benefit of the CITY OF SAN ANTONIO, TEXAS, a home rule city under Article 11, Section 5 of the Texas Constitution and municipal corporation primarily situated in Bexar County, Texas ("City").

RECITALS

- A. Landowner is the owner of an aggregate of approximately 2,597.6473 acres of real property in Bexar County, Texas, located within the exclusive extraterritorial jurisdiction of City (the "Land"), more particularly described in Exhibit "A".
- B. Landowner desires to develop the Land with a high quality, master-planned community; a full service, resort style hotel; single and multi-family residential housing; related commercial uses; and at least (2) golf courses.
- C. Pursuant to Section 43.0563, Texas Local Government Code, City, Landowner and the five representatives appointed by the Bexar County Commissioners Court under Section 43.0562(b) have entered into that certain Agreement For Services In Lieu of Annexation (the "Services Agreement"), pursuant to which City has agreed to the continuation of the extraterritorial status of the Land for a period of fifteen (15) years, as therein provided.
- D. As part of the consideration for City's agreement to enter into the Services Agreement, Landowner has agreed that, at such time as the Services Agreement has terminated, either pursuant to the expiration of the Term or upon a Termination Event (as those terms are defined herein), City may annex the Land upon the terms and agreements set forth in this Consent.
- E. This Consent is given by Landowner and accepted by City to evidence Landowner's consent to the annexation of the Land upon such termination of the Services Agreement.
- F. This Consent is to be fully effective from and after the Effective Date, subject only to the Services Agreement.

NOW, THEREFORE, Landowner does hereby covenant to and agree with City, as follows:

Definitions

For purposes hereof, the following terms are defined as set forth below:

"City" means as defined in the Recitals.

"Governmental Authority" means any applicable federal, state, county or City governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Land or this Consent.

"Governmental Rules" means any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

"Land" means all or part of the tracts of land described in Exhibit "A".

"Landowner" means Lumbermen's Investment Corporation, a Delaware corporation, and its successors or permitted assigns.

"Effective Date" means December 31, 2002.

"Service Plan" means the City of San Antonio Annexation Service Plan for Lumbermen Tracts, as attached to this Consent as Exhibit "B".

"Services Agreement" means as defined in the Recitals, which agreement is incorporated herein for all purposes.

"Term" means the duration of the Services Agreement, commencing on the effective date thereof and continuing until the stated termination date thereof.

"Termination Event" means those events described in Section 8.1, Section 8.2 and Section 8.3 of the Services Agreement which give rise to the optional or automatic termination of the Services Agreement.

Article 1. Consent to Annexation

- 1.1 Landowner's Consent. The Land has been proposed for annexation by City and has been included in an annexation plan approved by City. Upon the expiration of the Term or upon any Termination Event which has resulted in the termination of the Services Agreement, Landowner agrees that City may annex the Land for full purpose or, from time to time, so much thereof as City may elect to annex for full purpose, thereby extending its municipal services, regulations, voting privileges and taxing authority to the annexed portions of the Land and thereafter exercising regulatory authority as necessary to protect the public health, safety and general welfare of the inhabitants of such annexed portions of the Land. This Consent shall serve for all purposes as notice to and consent by Landowner in connection with any annexation of the Land by City for all intents and purposes.
- 1.2 Voluntary Petition for Annexation. Subject to the Services Agreement, this Consent is Landowner's submission to City of a voluntary petition for annexation of the Land. Landowner agrees that City may retain this voluntary petition for annexation of the Land and, in accordance herewith, may annex the Land or, from time to time, so much thereof as City may elect to annex, and to accomplish such annexation, City will not need to take the following actions, all of which are waived by Landowner:
 - 1.2.1 adopt or amend an annexation plan to include the Land;
 - 1.2.2 give notice to any service providers in the area of the Land;
- 1.2.3 compile an inventory of services to be provided by City upon annexation or make such inventory available for public inspection;
- 1.2.4 complete a service plan that provides for the extension of full municipal services to the Land, other than the Service Plan;
 - 1.2.5 hold any public hearings; and
- 1.2.6 undertake any negotiations for provision of services to the Land.

 Landowner confirms and agrees that, as Landowner is the sole owner of the Land as of the Effective Date, that such voluntary petition may not be revoked by Landowner except as provided in this Consent and is intended to be and shall be binding upon Landowner and its successors in interest in ownership of any right, title or interest in and to the Land or any part thereof.
- 1.3 Waiver. Landowner has irrevocably waived any and all legal requirements applicable to annexation of the Land by City, to the fullest extent permitted by law. From time to time hereafter, Landowner agrees to execute any and all documents reasonably requested by City to evidence such waiver and the consent hereby granted.
- 1.4 Revocation of Consent and Withdrawal of Voluntary Petition. This Consent may not be revoked by Landowner unless and until the Services Agreement has been nullified or terminated; provided, however, that this Consent may not be revoked if the Services Agreement terminates because of (i) the occurrence of the end of

the Term, (ii) a Termination Event, or (iii) a breach of Developer under the Services Agreement which results in termination under Section 8.5 of the Services Agreement.

1.5 City's Acceptance. City hereby accepts Landowner's voluntary petition for annexation of the Land, subject to the Services Agreement.

Article 2. Service Plan

Landowner and City agree that, upon annexation of the Land (or any part thereof) following the end of the Term or a Termination Event, City shall be required to provide only the municipal services described in the Service Plan, which Landowner agrees are sufficient as full municipal services.

Article 3. Covenants of Landowner

Subject to the Services Agreement, Landowner covenants to and with City as follows:

- 3.1 Landowner shall not oppose any action taken by City to annex the Land.
- 3.2 Landowner shall include the following language in each deed or lease of any part of the Land hereafter executed by or on behalf of Landowner:

"This (conveyance or lease, as applicable) is made and accepted subject to that certain Landowner's Consent to Annexation, which will permit the City of San Antonio to annex the herein described property upon the terms and conditions set forth therein. Acceptance of this (conveyance or lease, as applicable) shall evidence your consent and agreement to such annexation by City and may be relied upon by City as a beneficiary of your consent and agreement."

Article 4. Miscellaneous Provisions.

4.1 Notices. Any demand, request or other notice required or permitted to be given hereunder, or otherwise given in regard to this Consent shall be in writing and the same shall be given and be deemed to have been served and received (a) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is being given (or, if applicable, when delivery is refused by the party to whom notice is being given), or (b) if mailed, on the date which is two (2) business days following the date on which such notice is placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party to whom notice is being given at the address for such party as follows:

City:

City of San Antonio

100 Military Plaza, 1st Floor San Antonio, Texas 78207

Attention:

Director of Development Services

With copies to:

City Clerk

100 Military Plaza, 2nd Floor San Antonio, Texas 78205, and

City Attorney

100 Military Plaza, 3rd Floor San Antonio, Texas 78205

Landowner:

Lumbermen's Investment Corporation

5495 Beltline Road, Suite 225

Dallas, Texas 75240

Attention:

President

With a copies to:

Lumbermen's Investment Corporation

1300 S. MoPac Expressway Austin, Texas 78746

Attention:

General Counsel

Akin Gump Strauss Hauer & Feld LLP

300 Convent, Suite 1500 San Antonio, Texas 78205 Attention: M. Paul Martin

- 4.2 Severability. The invalidation of any one of the covenants or agreements herein contained, or the failure to enforce any of such covenants or agreements at the time of its violation, shall in no event affect any of the other covenants or agreements contained nor be deemed a waiver of the right to enforce the same or any other covenant or agreement thereafter.
- 4.3 Constructive Notice; Acceptance; Continuing Effect. Each present and future owner of any right, title, or interest in or to any part of the Land, whether as a fee owner, tenant, licensee or occupant in any right or capacity, shall be deemed to have consented and agreed to annexation of the Land by City, whether or not any reference to this Consent shall be contained in the instrument by which such party acquires an interest in such portion of the Land. This Consent shall be binding upon and inure to the benefit of Landowner and its devisees, tenants, licensees, successors and assigns.
- 4.4 Headings. The titles, headings, and captions used in this instrument are for convenience only and are not to be used in construing this instrument or any part hereof.
- 4.5 Exhibits. All documents referred to herein and all documents attached hereto are incorporated herein for all purposes.
- 4.6 Interpretation. If this Consent or anything set forth herein is or may be capable of interpretation in two or more conflicting ways, then the interpretation which is most nearly in accord with the general principals, purposes and objectives of this Consent shall govern and control the meaning thereof. If any punctuation, word, clause or provision necessary to give effect to any other word, clause or provision hereof has been omitted, then it is understood that such omission was unintentional and the omission may be supplied by inference.
- 4.7 Attorney's Fees.. If Declarant or City incurs reasonable expenses of any kind, including attorneys' fees, to enforce this Consent and shall prevail in such enforcement, the prevailing party is entitled to recover such expenses from the other party to this Consent.
- 4.8 Waiver. Any covenant, agreement or obligation of any party to this Consent will not be waived or rendered unenforceable by reason of any lack of enforcement thereof.
- 4.9 Public Record. This Consent may be filed by City in the Official Public Records of Bexar County, Texas.
 - 4.10 Effective Date. This Consent is dated as of the Effective Date.

EXHIBITS:

Exhibit "A":

Description of the Land

Exhibit "B":

Services Plan

Signed by each party as of the date of the acknowledgment of such party.

LANDOWNER:

		a Delaware corporation
		By: Secutive Vice President
THE STATE OF TEXAS	§	
Dallas	§	
COUNTY OF BEXAR	§	
This instrument was a	cknowledged befo	ore me on Junuary 3, 2003, by John Pierret, Executive
Vice President of LUMBERM corporation.	EN'S INVEST	MENT CORPORATION a Delaware corporation, on behalf of said
[seal]		(Sarbara D Kosex
		Notary Public, State of Texas
My Commission Expires:		
		Printed/Typed Name
	-	

LUMBERMEN'S INVESTMENT CORPORATION,

CITY OF SAN ANTONIO, TEXAS CITY: Terry M. Brechtel APPROVED AS TO FORM: Andrew F. Martin, City Attorney THE STATE OF TEXAS COUNTY OF BEXAR Christopher J. Brady This instrument was acknowledged before me on April 7 2003, 2002, by Terry M. Brechtel, as City Manager of the CITY OF SAN ANTONIO, TEXAS, a municipal corporation, on behalf of said corporation. [seal] Printed/Typed Name My Commission Expires:

Signed by each party as of the date of the acknowledgment of such party.

LANDOWNER:		LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation
		Ву:
		John Pierret Executive Vice President
THE STATE OF TEXAS	§ §	
COUNTY OF BEXAR	§	
This instrument was ac Vice President of LUMBERM corporation.		e me on, 2002, by John Pierret, Executive ENT CORPORATION, a Delaware corporation, on behalf of said
[seal]		
		Notary Public, State of Texas
My Commission Expires:		
		Printed/Typed Name

CITY:	CITY OF SAN ANTONIO, TEXAS
	By: Name: Title:
ATTEST:	
City Clerk	
APPROVED AS TO FORM:	
City Attorney	
THE STATE OF TEXAS \$ \$ COUNTY OF BEXAR \$	
This instrument was acknown	owledged before me on, 2002, by
a municipal corporation, on behalf of said	of the CITY OF SAN ANTONIO, TEXAS, corporation.
My Commission Expires:	Notary Public, State of Texas
	Printed/Typed Name

EXHIBIT A TO LANDOWNER'S CONSENT TO ANNEXATION TRACT ONE

A 1392.7 acre, or 60,666,506 square feet, more or less, tract of land being comprised of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and that 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the Rompel Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 1392.7 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the aforementioned 1394.189 acre tract;

THENCE:

N 23°23'37"W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47"W, 1274.56' by deed, the distance of 1274.56 feet being comprised of this call for 1203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE:

N 23°30'17"W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

THENCE:

N 23°32'11"W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, said iron rod also being the southwest corner of a 229.000 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas, (N 25°07'30"W by deed);

THENCE:

N 73°12'18"E, departing said east line of Fossil Ridge Subdivision, a distance of 2007.69 feet to a point;

THENCE:

N 01°22'40"W, a distance of 376.50 feet to a point;

THENCE:

N 13°37'20"E, a distance of 825.00 feet to a point;

THENCE:

N 23°30'23"W, a distance of 400.85 feet to a point;

THENCE:

Along the arc of a curve to the left, said curve having a radial bearing of N65°11'27" W, a radius of 760.00 feet, a central angle of 48°18'57", a chord bearing and distance of N 00°39'05" E, 622.06 feet, and an arc length of 640.89 feet to a point;

THENCE:

Along the arc of a curve to the right, said curve having a radial bearing of N58°53'08" E, a radius of 1000.00 feet, a central angle of 55°55'25", a chord bearing and distance of N 03°09'09" W, 937.77 feet, and an arc length of 976.05 feet to a point;

THENCE:

N 31°06'52"W, a distance of 110.00 feet to a point;

THENCE: S 58°53'08"W, a distance of 486.65 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of \$23°53'08" W, a radius of 1000.00 feet, a central angle of 55°00'00", a chord bearing and distance of \$ 86°23'08" W, 923.50

feet, and an arc length of 959.93 feet to a point;

THENCE: N 66°06'52"W, a distance of 1650.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of N06°06'52" W, a radius

of 1400.00 feet, a central angle of 30°00'00", a chord bearing and distance of N 81°06'52" W, 724.69

feet, an arc length of 733.04 feet to a point;

THENCE: S 83°53'08"W, a distance of 126.94 feet to a point;

THENCE: S 23°30'23"E, a distance of 603.61 feet to a found 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an interior corner of the said 1394.189 acre tract being the northeast corner of the

aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract;

THENCE: S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1581.35 feet

to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 87°49'00"W, 7167.93' by deed, the distance of 7167.93 feet being comprised of this call for 1581.35 feet, the next call for 1373.99 feet, 4091.02 feet along the north line of the aforementioned 194.2434 acre tract and a distance of 21.92 feet to the old right-of-way line of Bulverde Road which is described in a

Bulverde Road right-of-way map dated November of 1985);

THENCE: S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1373.99 feet

to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the northwest corner of the

403.9458 acre tract and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE: S 89°24'59"W, along and with the south line of the 1394.189 acre tract and the north line of the

194.2434 acre tract, a distance of 4090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road and at the northwest corner of the said

194.2434;

THENCE: Along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 10°32'43" W, a distance of 2.67 feet to a point;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 22°37'38", a chord bearing and distance of N 00°46'06"E, 391.97 feet and an arc length of 394.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 12°04'55"E, a distance of 214.65 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly, with a curve to the right, said curve having a radius of 1102.00 feet, a central angle of 30°40'02", a chord bearing and distance of N 27°24'56" E, 582.82 feet, and an arc length of 589.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 42°44'57"E, a distance of 274.54 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of a 135.532 acre tract described in instrument recorded in Volume 5350, Page 2076-2081 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 89°25'08"E, departing the east right-of-way line of Bulverde road, along and with the south line of the 135.532 acre tract, a distance of 5968.30 feet to a found ½" iron rod at the southeast corner

of the said 135.532 acre tract;

THENCE:

N 23°29'40"W, a distance of 1190.36 feet, (N 25°05'12"W, 3406.40' by deed, the combined deed distance of 3406.40 feet in this call and that of the deed distance of 1064.15 feet quoted in the next call, being comprised of this call of 1190.36 feet, and next two calls of 2783.83 feet, and 494.80 feet), to a found ½" iron rod at the northeast corner of the 135.532 acre tract and the southeast corner of a 1350.297 acre tract recorded in Volume 4859, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

N 23°29'40"W, along and with the east line of the 1350.297 acre tract, a distance of 2783.83 feet, (N 25°18'04"W, 1064.15' by deed) to a found ½" iron rod marked MBC at an angle point;

THENCE:

N 23°54'32"W, along and with the east line of the 1350.297 acre tract, a distance of 494.80 feet to a found ½" iron rod at the northwest corner of this tract;

THENCE:

N 55°13'56"E, along and with the south line of the 1350.297 acre tract, a distance of 346.08 feet to a found ½" iron rod at an angle point;

THENCE:

N 55°17'34"E, along and with the south line of the 1350.297 acre tract, a distance of 381.68 feet to a found ½" iron rod at an angle point;

THENCE:

N 54°44'11"E, along and with the south line of the 1350.297 acre tract, a distance of 894.23 feet to a found ½" iron rod at an angle point, (N 53°31'36"E, 2026.43' by deed);

THENCE:

N 55°46'21"E, along and with the south line of the 1350.297 acre tract, a distance of 403.85 feet to a found iron rod in the northwest corner of a 785.4 acre tract out of a 927.064 acre tract recorded in Volume 5362, Pages 756-764 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

S 54°16'26"E, departing the south line of the 1350.297 acre tract, along and with the west line of the 785.4 acre tract, a distance of 3325.13 feet to a found iron rod at an angle point, (S 55°52'24"E, 3325.13' by deed);

THENCE:

S 54°11'40"E, along and with the west line of the 785.4 acre tract, a distance of 5267.86 feet to a fence post at an angle point, (S 55°47'33"E, 5277.27' by deed);

THENCE:

S 50°09'55"E, along and with the west line of the 785.4 acre tract, a distance of 253.64 feet to a found iron rod in the northeast corner of a 51.788 acre tract described in instrument recorded in Volume 7002, Pages 658-662 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

S 03°57'49"E, departing the west line of the 785.4 acre tract, along and with the west line of the 51.788 acre tract, passing at 1048.25 feet a fence post at the southwest corner of the 51.788 acre tract and the northwest corner of a 30.04 acre tract described in instrument recorded in Volume 5362, Pages 1539-1542 of the Official Public Records of Real Property of Bexar County, Texas and continuing along and with the west line of the 30.04 acre tract a total distance of 1479.02 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 05°30'33"E, 1478.86' by deed);

THENCE:

S 08°30'05"E, along and with the west line of the 30.04 acre tract, a distance of 382.99 feet to a found ½" iron rod at an angle point (S 09°56'00"E, 382.42' by deed);

THENCE:

S 01°31'55"W, along and with the west line of the 30.04 acre tract, passing at 396.50 feet a fence post at the southwest corner of the said 30.04 acre tract and the northwest corner of a 24.95 acre tract described in instrument recorded in Volume 4884, Pages 1495-1498 of the Official Public Records of Real Property of Bexar County, Texas, and continuing along and with the west line of the 24.95 acre tract a total distance of 1192.66 feet to a found 5/8" iron rod at the southwest corner of the 24.95 acre tract and the northwest corner of a 185.610 acre tract of land described in instrument recorded

in Volume 4525, Pages 164-167 of the Deed Records of Bexar County, Texas, (S 00°10'35"E, 1193.13' by deed);

THENCE:

S 16°01'29"W, along and with the west line of the 185.610 acre tract, a distance of 5051.21 feet, (S 14°18'24"W, 2685.40' and S 14°33'47"W, 2366.39' by deed); to a found ½" iron rod in the north right-of-way line of Evans Road, a 110 foot right-of-way;

THENCE:

N 77°10'31"W, along and with the north right-of-way line of Evans Road, passing at 1600.26 feet the southwest corner of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and continuing for a total distance of 2134.38 feet to a found ½" iron rod at a point of curvature;

THENCE:

Northwesterly, along the arc of a curve to the right, said curve having a radius of 2578.39 feet, a central angle of 8°52'15", a chord bearing and distance of N 72°44'24" W, 398.80 feet, and an arc length of 399.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

THENCE:

N 68°18'16"W, a distance of 213.96 feet to the POINT OF BEGINNING and containing 1392.7 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

October 22, 2002

JOB No.:

3538-24

DOC.ID.:

H:\3538\24\WORK\FN\021018-A4-1394.doc

TRACT TWO

A 229.0 acre, or 9,973,288 square feet, more or less, tract of land being comprised of that 229.00 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 229.0 acre tract being more fully described as follows:

COMMENCING: At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, and a corner of a 1,394.189 acre tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°23'37" W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1,203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47" W, 1,274.56' by deed, the distance of 1,274.56 feet being comprised of this call for 1,203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE: N 23°30'17" W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

THENCE: N 23°32'11" W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to the POINT OF BEGINNING at a found ½" iron rod with a yellow cap marked "Pape-Dawson", being the southwest corner of the 229.0 acre tract herein described;

THENCE: N 23°31'11" W, along and with the east line of Fossil Ridge Subdivision, passing at 104.93 feet a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of Lot 17, Block 4 of Fossil Ridge Subdivision, and continuing for a total distance of 1,289.32 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of said Fossil Ridge Subdivision;

THENCE: N23°31'11" W, along and with the east line of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract, a distance of 2,726.01 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1,394.189 acre tract;

THENCE: N 23°30'23" W, a distance of 603.61 feet to a point;

THENCE: N 83°53'08" E, a distance of 126.94 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 06°06'52" E, a radius of 1,400.00 feet, a central angle of 30°00'00", a chord bearing and distance of S 81°06'52" E, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE: S 66°06'52" E, a distance of 1,650.00 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N 23°53'08" E, a radius of 1,000.00 feet, a central angle of 55°00'00", a chord bearing and distance of N 86°23'08" E, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE: N 58°53'08" E, a distance of 486.65 feet to a point;

THENCE: S 31°06'52" E, a distance of 110.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 58°53'08" W, a radius

of 1,000.00 feet, a central angle of 55°55'25", a chord bearing and distance of S 03°09'09" E, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of S 5°11'27" E, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of S00°39'05" W, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: S 23°30'23" E, a distance of 400.85 feet to a point;

THENCE: S 13°37'20" W, a distance of 825.00 feet to a point;

THENCE: S 01°22'40" E, a distance of 376.50 feet to a point;

THENCE: S 73°12'18" W, a distance of 2,007.69 feet to the POINT OF BEGINNING and containing 229.0

acres of land in Bexar County, Texas. Said tract being described in accordance with a survey

prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 22, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-A3-229

TRACT THREE

A 187.20 acre, or 8,154,390 square feet, more or less, tract of land out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 in Bexar County, Texas. Said 187.20 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road, an 86-foot right-of-way, being at a northwest corner of Fossil Creek Subdivision, Unit 1, recorded in Volume 9541, Pages 177-178 of the Deed and Plat Records of Bexar County, Texas, and the southernmost corner of the herein described tract;

THENCE:

Northwesterly, along and with the east right-of-way line of Bulverde Road with a curve to the left, having a radial bearing of S 67°45'32" W, a radius of 1,313.00 feet, a central angle of 22°59'41", a chord bearing and distance of N 33°44'18" W, 523.42 feet and an arc length of 526.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 1.511 acre tract known as Parcel 12E, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 1.511-acre tract the following bearings and distances;

N 04°41'26" W, a distance of 198.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 21°13'51" W, a distance of 59.48 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 44°11'00" W, a distance of 83.79 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 63°24'38" W, a distance of 432.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 70°15'43" W, a distance of 71.04 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 79°40'49" W, a distance of 370.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 1.511-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 58°46'37" W, a distance of 310.51 feet, to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 1002.00 feet, a central angle of 34°57'20', a chord bearing and distance of N 41°17'57" W, 601.87 feet and an arc length of 611.31 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 23°49'18" W, a distance of 788.47 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northwesterly with a curve to the left, said curve having a radius of 1,475.00 feet, a central angle of 14°53'03", a chord bearing and distance of N 31°15'49" W, 382.10 feet and an arc length of

383.17 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 0.034 acre tract known as Parcel 12G, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 0.034-acre tract the following bearings and distances;

N 30°24'18" W, a distance of 110.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 64°10'27" W, a distance of 52.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 0.034-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 41°59'45" W, a distance of 123.38 feet to a found 1/2" iron rod at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 31°27'02", a chord bearing and distance of N 26°16'14" W, 541.51 feet and an arc length of 548.37 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 10°32'43" W, a distance of 219.57 feet to a found ½" iron rod at the northwest corner of the aforementioned 194.2434 acre tract, the west corner of a 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas and at an angle point;

THENCE:

N 89°24'59" E, departing the east right-of-way line of Bulverde road, along and with the south line of the 1,394.189 acre tract, a distance of 4,090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" at the northwest corner of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 19°21'43" W, along and with the west line of the 403.9458 acre tract, a distance of 1,027.05 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S17°48'10" W, 1,026.69 feet by deed);

THENCE:

S 89°26'18" W, along and with the 403.9458 acre tract, a distance of 480.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

THENCE:

S 00°19'34" E, along and with the 403.9458 acre tract, passing at 1,437.69 feet a found 60 penny nail at the northwest corner of Fossil Creek Subdivision, Unit 1, and continuing for a total distance of 2,422.64 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 01°56'52" E, 2,422.66 feet by deed);

THENCE:

S 60°02'12" W, along and with Fossil Creek Subdivision, Unit 1, a distance of 500.02 feet to the POINT OF BEGINNING and containing 187.20 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 18, 2002 JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-a1-194

TRACT FOUR

A 785.4 acre, or 34,210,000 square feet, tract of land being the remainder of that 927.064 acre tract described in deed from Henry Van de Walle et al to Dan F. Parman in Volume 3089, Page 1393-1399 of the Official Public Records of Real Property of Bexar County, Texas, and conveyed to Peter Wolverton in Volume 5382, Page 756-764 of the Official Public Records of Real Property of Bexar County, Texas out of the E. Martin Survey 89, Abstract 524, County Block 4909, the E. Gonzales Survey 441, Abstract 288, County Block 4902, the Salvador Flores Survey No. 440, Abstract 243, County Block 4907, the Jil Jimenez Survey 358, Abstract 821(Bexar) 682(Comal), County Block 4905, the W. H. Hughes Survey No. 478, Abstract 345(Bexar) 364(Comal), County Block 4906, and the F. Valdez Survey No. 478½, Abstract 787, County Block 4908, in Bexar and Comal Counties, Texas. Said 785.4 acres being more particularly described as follows:

BEGINNING:

at a set ½" iron rod with yellow cap marked "Pape-Dawson" at the southernmost corner of this tract, on the south line of said 927.064 acre tract, at the southwest corner of a 99.900 acre tract out of said 927.064 acre tract, the southwest corner of said 99.900 acre tract and said 927.064 acre tract being S 64°40'20" E, a distance of 780.00 feet to a found ½" iron rod, S 65°48'16" E, a distance of 1696.16 feet to a found ½" iron rod:

THENCE:

Along and with the south line of said 927.064 acre tract the following calls and distances:

N 65°40'20"W, at 29.25 feet passing the northeast corner of a 51.788 acre tract conveyed to John B. Webb in Volume 7002, Page 658-682 of the Official Public Records of Real Property of Bexar County, Texas, and continuing with the south line of said 927.064 acre tract for a total distance of 1636.13 feet to a found ½" iron rod;

N 49°15'20"W, a distance of 1274.99 feet to a found ½" iron rod at the northwest corner of said 51.788 acre tract, the northeast corner of a 1394.189 acre tract conveyed to Lumbermans Investment Corporation in Volume 5792, Page 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 50°51'38" W, 1276.71 feet;

N 50°09'55"W, a distance of 253.64 feet to a found 1/2" iron rod, by deed N 51°46'13"W, 246.49 feet;

N 54°11'40"W, a distance of 5267.86 feet to a found ½" iron rod in a 30" Live Oak, by deed N 55°47'33" W, 5276.83 feet;

N 54°16'26"W, a distance of 3325.13 feet to a found ½" iron rod at the southwest corner of the said 927.064 acres, the northwest corner of said 1394.189 acre tract, on the southeast line of a 1350.297 acre tract conveyed to the Poerner Family Partnership in Volume 4869, Page 292-312 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 55°52'19" W, 3325.35 feet;

THENCE:

N 54°59'55"E, a distance of 2448.93 feet to a found ½" iron rod at the northwest corner of said 927.064 acre tract, by deed N 53°24'02" E, 2449.06 feet;

THENCE:

Continuing with the north line of said 927.064 acre tract the following calls and distances:

S 41°19'21"E, a distance of 1536.97 feet to a found ½" iron rod, by deed S 42°55'36" E, 1536.87 feet;

N 79°13'24"E, a distance of 849.81 feet to a found 1/2" iron rod, by deed N 77°37'30" E, 849.79 feet;

S 80°58'59"E, a distance of 1577.28 feet to a found ½" iron rod in 18" Cedar, by deed S 82°36'03" E, 1577.43 feet;

S 19°36'38"E, a distance of 238.56 feet to a found ½" iron rod in 17" Cedar, by deed S 21°16'00" E, 238.76 feet;

S 31°12'31"E, a distance of 408.74 feet to a found ½" iron rod in 20" Cedar, by deed S 32°46'48" E, 408.62 feet;

THENCE:

S 38°28'19"E, a distance of 513.61 feet to a found ½" iron rod at the north corner of a 7.312 acre tract conveyed to John L. and Mary H. McClung in Volume 6934, Page 826-829 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of that 40.955 acre tract out of said 927.064 acre tract conveyed to John O. Spice in Volume 6932, Page 279-286 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

Along and with the south line of said 40.955 acre tract the following calls and distances:

S 76°31'41"W, a distance of 408.43 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S74°57'31" W, 408.99 feet;

S 09°28'05"E, a distance of 244.99 feet to a found 1/2" iron rod, by deed S 11°10'57"E, 245.63 feet;

S 44°28'05"E, a distance of 310.27 feet to a found ½" iron rod, by deed S 46°10'57" E, a distance of 310.00 feet;

S 59°36'52"E, a distance of 289.82 feet to a found 1/2" iron rod, by deed S 61°10'57" E, 290.07 feet;

S 88°19'58"E, a distance of 1558.63 feet to a found 1/2" iron rod, by deed East 1558.42 feet;

S 66°02'47"E, a distance of 318.27 feet to a found 1/2" iron rod, by deed S 67°40'05" E, 318.43 feet;

S 88°18'36"E, a distance of 895.37 feet to a found 1/2" iron rod, by deed East, 894.76 feet;

N 74°47'26"E, a distance of 418.72 feet to a found $\frac{1}{2}$ " iron rod, bent, by deed N 73°10'20" E, 417.94 feet;

S 88°07'27"E, at 626 feet passing the centerline of the Cibolo Creek and continuing for a total distance of 954.80 feet to a found ½" iron rod at the southeast corner of said 40.955 acre tract, on the east line of said 927.064 acre tract;

THENCE:

Along and with the east line of said 927.064 acre tract the following calls and distances:

S 16°12'32"E, a distance of 527.73 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of said Cibolo Creek, by deed S 17°50'29" E;

THENCE:

S 63°21'01"E, a distance of 311.99 feet to a set ½" iron rod with cap marked "Pape-Dawson" on the northeast corner of the said E. Martin Survey, on the south line of the said W. H. Hughes Survey 478, from which a 60" Live Oak bears N 43°E, a distance of 32.6 feet (11 ¾ varas) called a double 20" Live Oak in the deed of 392.0 acres from Dierks to 4D Bar Ranch recorded in Document 98-06026868 of the Official Records of Comal County, by deed S63°15'29"E, 328,78 feet;

THENCE:

S 10°13'15"E, along and with the west line of said 392.0 acres, called as southerly line of the Joseph Thompson Survey 758, a distance of 2453.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of the Cibolo Creek, the northeast corner of the aforementioned 99.900 acre tract, by deed S 11°45'29" E;

THENCE:

Along and with the north and west line of said 99.900 acre tract the following calls and distances:

S 79°50'41" W, a distance of 1149.13 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S78°14'31"W, 1150.73 feet;

S 08°48'58" W, a distance of 1577.45 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S 07°12'48" W, 1577.45 feet;

THENCE:

S 24°18'58"W, a distance of 249.84 feet, by deed S 22°42'48" W, 250.00 feet, to the POINT OF BEGINNING and containing 785.4 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 19, 2000

JOB No.: 9988-00

DOC.ID.: N:\SURVEY00\0-10000\9988-00\9988-00.doc

TRACT FIVE

A 2.858 acre, or 124,493 square feet, more or less, tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W. M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 2.858 acre tract being more fully described as follows:

BEGINNING:

At a set ½" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center line Station 39+03.31, at the most southerly northeast corner of Parcel 12F, a 1.904 acre tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE:

Departing the west right-of-way line of Bulverde Road, along and with the east line of Parcel 12F the following bearings and distances;

S 87°28'16"W, a distance of 418.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 73°07'57"W, a distance of 151.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 30°12'08"W, a distance of 113.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 01°05'28"E, a distance of 97.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 33°47'18"E, a distance of 229.50 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the west right-of-way line of said Bulverde Road;

THENCE:

Northeasterly, along and with the west right-of-way line of Bulverde Road, with a curve to the left, said curve having a radial bearing of N 55°47'04" E, a radius of 1088.00 feet, a central angle of 24°33'41", a chord bearing and distance of S 46°29'46" E, 462.84 feet and an arc length of 466.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 58°46'37"E, along and with the west right-of-way line of Bulverde Road, a distance of 181.34 feet to the POINT OF BEGINNING and containing 2.858 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

TRACT SIX

A 0.4893 acre, or 21,313 square feet, more or less tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 0.4893 acre tract being more fully described as follows:

BEGINNING At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of

Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center

line Station 21+68.58 at the southeast corner of this tract;

THENCE: S 60°26'26"W, departing the west right-of-way line of Bulverde Road, a distance of 26.83 feet to a

set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the east line of Parcel 12D, a 0.769 acre

tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE: Along and with the east line of Parcel 12D, the following bearings and distances;

N 32°32'25"W, a distance of 52.11 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 47°54'19"W, a distance of 128.87 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 27°44'21"W, a distance of 98.42 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 04°41'26"W, a distance of 135.59 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" in the west right-of-way line of Bulverde Road;

THENCE: Southeasterly, along and with the west right-of-way line of Bulverde Road, along the arc of a curve

to the right, said curve having a radial bearing of S49°42'58" W, a radius of 1227.00 feet, a central angle of 18°34'00", a chord bearing and distance of S 31°00'02" E, 395.87 feet, and an arc length of 397.61 feet to the POINT OF BEGINNING and containing 0.4893 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the

ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

EXHIBIT B TO LANDOWNERS CONSENT TO ANNEXATION

CITY OF SAN ANTONIO ANNEXATION SERVICE PLAN FOR

LUMBERMEN TRACTS

1. This service plan shall be valid for ten (10) years from and after the effective date of the annexation ordinance annexing this specific property. Renewal of the service plan shall be solely at the discretion of the City of San Antonio.

2. This service plan is a contractual obligation that is not subject to amendment or repeal except that if the City Council determines at public hearings required by Section 43.056, Texas Local Government Code, that changed conditions or subsequent occurrences make this service plan unworkable or obsolete, the City Council may amend the service plan to conform to the changed conditions or subsequent occurrences.

SERVICES SERVICE FOR THE LUMBERMEN TRACTS

TO BE EXTENDED:

The San Antonio Police Department will respond to calls for assistance, Police protection

enforcement, and protection and provide other services offered by the Police

Department on the effective date of annexation.

Fire protection The San Antonio Fire Department will respond to calls for assistance, fire

> emergencies and provide other fire-related services as needed on the effective date of annexation. The City of San Antonio will provide Emergency Medical Service

(EMS).

Solid waste

For the first two years after annexation, residents will have the option Residential Collection

to choose between a private company or City-provided services. If a private company is selected, residents may negotiate the level of waste collection services desired. If City-provided service is selected, residents will receive garbage collection service and recycling collection. Brush and bulky item services will be provided. Dead animal collection also will be provided upon request. At any time during the two-year period, residents may switch to City-provided services. The City may use a contractor to provide the services. At the end of the two-year

period, all residents use City-provided collection services.

Commercial Solid Waste & Dead Animal Pick-up

Commercial garbage collection shall be available through the purchase

of bags and stickers; and commercial dead animal tags at designated locations.

If service is not desired, private service is permissible.

Solid waste & Brush Fees For solid waste services contracted or provided by the City of San Antonio,

monthly fees will be assessed for these services on residential CPS bills. These

fees may be changed by City Council.

Environmental Fee A monthly fee will be assessed to residences, apartments, and businesses on CPS

> bill for environmental services. The services include and are not limited to, Citywide clean up events, neighborhood sweeps, illegal dump cleanup and

enforcement, and the maintenance of closed City landfills.

Federal Storm Water Fee A monthly fee will be assessed to residential, multifamily, and commercial and

public facilities on their SAWS bill. The rate and billing entity can be changed

by the City Council.

SERVICES

SERVICE FOR THE LUMBERMEN TRACTS TO BE EXTENDED:

Water Services

Public water facilities shall be maintained and operated by the San Antonio Water System (SAWS), if not already owned by another water utility. Water service shall be provided and extended in accordance with SAWS policies and established fees to those customers within SAWS certificated service area.

Wastewater Services

Public wastewater facilities shall be maintained and operated by SAWS if not already owned by another wastewater utility. Wastewater service shall be provided and extended in accordance with SAWS policies and established fees to those customers within the regional agent boundary.

Water Supply Fee

A monthly fee assessed to all SAWS water customers to directly fund the acquisition of new water supplies. The rate is the same for all customers and is based on a per hundred gallons of consumption.

Storm water Compliance

The City of San Antonio and Texas Department of Transportation (TX Dot) are owners and operators of the Municipal separate storm sewer systems (MS4s) within the City of San Antonio. The City of San Antonio Public Works Department will provide the National Pollutant Discharge Elimination System Permit Services.

Storm Water Monitoring

Storm water monitoring and treatment activities as required by EPA will be provided by SAWS and the City of San Antonio Public Works Department.

Traffic control devices

New traffic control devices will be installed as approved by the City Council.

Maintenance of streets & Drainage

Street and drainage improvements, which have been properly platted, duly dedicated, and accepted by the City of San Antonio and/or Bexar County shall be maintained by the Department of Public Works.

Maintenance of Street Signs and traffic Control devices The City of San Antonio will assume the expenses for operation and maintenance of public streetlights at intersections, cul-de-sacs, dead ends and other locations that conform to the City's policy for placing streetlights. City Public Service shall perform maintenance and installation of streetlights. The Public Works Department will maintain traffic control devices and street name signs.

Zoning

Upon the effective date of annexation, all property will be zoned "DR" Development Reserve. The "DR" designation is a temporary zoning district that indicates that the property may be suitable for any land use subject to analysis and the placing of permanent zoning on the property. While under the "DR" zoning district designation, the property may be used for agricultural purposes or for single family development in conformance with the regulations of an "R-6" zoning district. The City will initiate the zoning process for a permanent zoning classification as determined and recommended by the City Zoning Commission. The City's Zoning Commission shall determine time lines for completion.

Building Permits

Incomplete construction must obtain building permits from the Development Services Department in accordance with City Codes. In addition, as part of the permitting process, applicant(s) will be required to adhere to the City's Tree and Landscape requirements and have access to the Development process Information and Guidance Division. A one stop development service counter has been created to assist the public in any development questions that relate to Building, Planning, and Public Works issues.

SERVICES

SERVICE FOR THE LUMBERMEN TRACTS TO BE EXTENDED:

Certificate of Occupancy & other Related licenses New and existing businesses must obtain a Certificate of Occupancy and related licenses required by the City Code from the Development Services Department, Health Department, and/or City Tax Office.

Nonconforming rights

To establish nonconforming rights for zoning, property owners with existing land uses must register within one year of the annexation date with the Development Services Department. A Certificate of Occupancy will be issued certifying only those uses required by applicable City and State Codes. Unless exempted from Chapter 43 of the Texas Local Government Code, nonconforming rights to allow future construction or the development of a master plan must be filed within 60 days of annexation, with the Department of Planning in accordance with the Unified Development Code (UDC).

Other municipal Services Other services available are health, animal control, library, recreational programs and human resources.

Elections

Provision of elections, polling sites for the City of San Antonio elections, is made by the Office of the City Clerk and are available to the citizens of San Antonio.

Code Compliance

The Code Compliance Department will enforce city codes and regulations in accordance with the Unified Development Code (UDC). Also, violations pertaining to noise, illegal dumping, minimum housing, including unsanitary premises, front yard parking, livestock, alley and right-of-way violations, and water and sewer, water leaks or discharges of wastewater on private or public property will be enforced. In addition, this department is also responsible for monthly inspections of salvage, junkyards and monitoring and enforcing code requirements of certain materials received at salvage/junkyards.

Gas & electricity

Gas/electric service shall be provided in accordance with City Public Service policies for gas and electric line extensions and service connections.

Customers requiring gas/electric line extensions for their property will be assessed a fee as per the fee tables established by City Public Service. The fees are collected prior to construction. Certain CPS fees are refundable as per CPS policies.

Service Concept

The LUMBERMEN TRACTS is located within the San Antonio Water System's water and wastewater service areas. Upon annexation, citizens located within SAWS service area will pay lower inside the City limits rates as opposed to outside the City limits rates.

2.0 INTRODUCTION

2.1 Purpose

The purpose of this PLAN is to set forth the design, construction, management, water quality monitoring and corrective action requirements for all golf courses and golf learning centers constructed within the Property (collectively, the "Golf Courses"). This PLAN identifies a wide range of cultural, mechanical, chemical, and structural practices to be employed to protect water quality, preserve and protect habitat, and otherwise preserve environmental quality within the Property.

2.2 Goals and Objectives

The specific objectives of the PLAN are to:

- Identify site, climate, irrigation, soils, geology, water resources, turfgrass, and vegetation conditions at the Golf Courses.
- Identify turfgrass, soil, and water quality risks.
- Identify specific alternate management practices and current Best Management Practices ("BMPs") for controlling runoff, construction, environmentally sound irrigation, soil and water conservation, fertilization, pest and disease control, and otherwise protecting water quality. BMPs change from time to time, however, and the San Antonio Water System, a wholly-owned municipal utility of the City of San Antonio ("SAWS") reserves the right to impose different, and more stringent BMPs, upon the Golf Courses as such practices are revised.
- Develop and implement a water quality monitoring plan to protect water resources in general, and the Edwards Aquifer and Trinity Aquifer in particular.
- Identify action thresholds to meet water, soil and turfgrass quality standards.
- Establish remedial action to be taken in the event any action thresholds are exceeded.
- Establish documentation requirements to record irrigation practices, fertilization and pesticide application practices, water quality monitoring results, soil fertility tests, and turfgrass nutrient content tests.

2.3 Applicability

The requirements set forth in this PLAN shall apply to any and all Golf Courses constructed within the Property, and shall be binding upon Lumbermen's Investment Corporation (the "Developer") and each successive owner, lessee and operator of any one or more of the Golf Courses. The Developer may assign responsibility for compliance with this PLAN to future owners, lessees and/or operators of the Golf Courses provided prior written notice and a copy of such assignment is furnished to SAWS and the City of San Antonio (the "City"), and provided further that SAWS and the City consent to such assignment. The City and SAWS hereby consent to the assignment of responsibility for compliance with this PLAN by the Developer to the Professional Golfers' Association of America or a wholly-owned subsidiary or affiliate thereof (hereinafter, "PGA") in accordance with the terms and conditions of the Services Agreement (as hereinafter defined). Any conveyance of the Golf Courses by the Developer or agreement relating to the operation of one or more of the Golf Courses shall be made expressly subject to this PLAN and the specific operation plans approved by SAWS, and shall obligate the purchaser, lessee and operator to comply with the provisions hereof.

2.4 Relationship to Other Legal Requirements

This PLAN constitutes an exhibit to that certain "Agreement for Services In Lieu of Annexation Between the City of San Antonio and Lumbermen's Investment Corporation" (the "Services Agreement") and is incorporated therein for all purposes.

Under no circumstances shall this PLAN be construed to release the Developer, any contractor or any golf course operator from compliance with any other applicable federal, state or local law, rule or requirement that may otherwise be applicable to the construction, operation or management of the Golf Courses. In the event of a conflict between this PLAN and any such legal requirement, the more rigorous (i.e., environmentally protective) practice shall control. Further, this PLAN shall in no manner be construed to exempt the Golf Courses from compliance with any applicable local, state or federal ordinance, law or regulation that may become effective after execution of the Services Agreement. Finally, any determination that the Golf Courses are exempt from any other local, state or federal requirement shall not be construed to exempt or relieve the Golf Courses from compliance with any requirement set forth in this PLAN, except as expressly provided in this PLAN.

2.5 Amendments

This PLAN may be amended from time to time only by written agreement of SAWS, the City of San Antonio, and by the owner(s) of the lands to be impacted by such amendment.

3.0 SURFACE AND GROUNDWATER PROTECTION

3.1 Operation Plans

The following operation plans, the minimum requirements concerning each of which are more fully set forth in this PLAN, shall be submitted to SAWS for review and approval for each Golf Course:

- Golf Course Design Plan
- Water Pollution Abatement Plan
- Storm Water Pollution Prevention Plan
- Integrated Pest Management Plan
- Nutrient Management Plan
- Irrigation Plan
- Wellhead and Source Water Protection Plan
- Water Quality Monitoring Plan

The Developer may submit one or more plans concurrently to expedite review and approval by SAWS. By way of example and not in limitation, the Developer may submit one or more of the individual operation plans as part of a Water Pollution Abatement Plan.

Construction of the Golf Courses shall not commence unless and until SAWS has approved the specific operation plans required by this PLAN, or SAWS otherwise provides written authorization to commence specified clearing activities.

3.2 Review and Approval Process

To ensure that information and data within the operation plans is complete, to expedite SAWS' review and approval, and to ensure that potential adverse environmental impacts are identified as early as possible in the review process, SAWS staff shall participate in each of the following processes associated with the design and construction of the Golf Courses:

- · Review of initial Golf Course routing and design plans
- Review of geologic features within the Golf Courses
- On-site inspection of proposed Golf Course routing

- Attend concept design meetings relating to proposed establishment of water quality management zones, if any
- Attend concept design meetings relating to the establishment of all proposed water quality monitoring locations
- Review Golf Course preliminary grading plans
- Review preliminary operation plans
- Review final draft operation plans (including Water Pollution Abatement Plans)
- Review of proposed topsoil sources
- Attend pre-construction meetings
- Attend monthly construction progress meetings
- On-site inspection of construction activities
- Inspect installation of lysimeters, catch basins, and any other water quality monitoring sites
- Attend final walk-through

The results of SAWS' review of individual operation plans (whether combined with a Water Pollution Abatement Plan or not) will be communicated to the applicant not later than forty-five (45) calendar days following the date of receipt of each complete operation plan. Failure to notify the applicant of the results of SAWS' review within said forty-five day period shall constitute deemed approval of the plan(s).

In the event that SAWS does not approve all or a portion of any operation plan, SAWS shall specifically identify the basis for such disapproval during the forty-five (45) day period. The basis for such disapproval must relate to environmental protection or other matters within SAWS' jurisdiction or this PLAN. In the event SAWS withholds its approval, SAWS and the applicant shall utilize good faith efforts to reach a mutually-agreeable solution to the issue(s) of concern identified by SAWS as promptly as practicable.

SAWS' approvals required under this PLAN are limited to the purposes described in this PLAN and do not reflect any commitment, approval, representation, warranty or obligation with respect to the sufficiency, accuracy, completeness or integrity of any matters so approved by SAWS, all of which are expressly disclaimed by SAWS. Moreover, each approval by SAWS is in addition to the usual and customary approvals required by SAWS under ordinances adopted by the City.

3.3 Geology Considerations

The Edwards Aquifer is one of the most productive carbonate-rock aquifers in the world. It displays typical karst-type landforms including caves, sinkholes, solution cavities and similar formations. The landforms have been further modified by the results of geologic activities associated with the Balcones Fault Zone. The modifications are seen in the presence of faulting and fracturing of the Edwards Formation and the associated dissolution along these features. Additionally, soil development over the Edwards Recharge Zone is typically shallow (less than 18 inches) and not very widespread.

Most recharge to the Edwards Aquifer results from the percolation of streamflow loss and the infiltration of precipitation through porous parts of the outcropping recharge zone. It is estimated that stream loss accounts for 60-80 percent of the recharge to the Edwards Aquifer in the San Antonio area and the rest of the recharge is derived from direct infiltration in the interstream areas (MacClay and Land, 1988). Carbonate (karst) aquifers can be quite susceptible to contamination where the pollutants are in and near the outcrop or recharge zone. This fact is the basis for several methods of aquifer protection included in typical BMPs for development over the Edwards Aquifer Recharge Zone.

The Property, including the proposed Golf Course areas, lies over an area currently designated as the Edwards Aquifer Recharge Zone in northeastern Bexar County. The site is effectively divided into two portions by a northeast to southwest trending fault. The movement of this fault has placed units of the lower Edwards, the Kainer Formation, at the surface to the north of the fault. Units of the upper Edwards, the Person Formation, are at the surface to the south of the fault (Figure 1 USGS reference).

Multiple geologic assessments have been performed for lands within the Property, including, most recently, the assessment performed by the three-person "Geologic Assessment Committee." Sensitive features, including karst features, identified as a result of the assessments are identified on the Geologic Map attached as Exhibit "A" hereto. Karst features found on the subject site include two small caves with one known as Elm Waterhole Cave. These features are not located in the proposed Golf Course area, however their presence indicates that other features may be found during construction of the overall development. The units of the Person Formation typically exhibit more porosity and permeability, particularly the Leached & Collapsed member that is present across a large portion of the southern part of the subject site, and therefore are more likely to have karst features present.

Additionally, the U.S. Geological Survey ("USGS") and SAWS cooperated in the development of a Vulnerability Assessment Report (Figure 2) for the Edwards Aquifer Recharge Zone. In this report, the area to the south of the fault previously discussed, especially where the Leached & Collapsed Member is at the surface, is rated as a higher vulnerable area than the adjacent area to the north.

3.4 Recharge Sensitivity

As described in Section 3.3, the Edwards Aquifer is a karst limestone aquifer. While other factors contribute to the creation of pathways that recharge the Edwards Aquifer, such as faulting and bedding planes, the dissolution of bedrock by water flow is the prime ingredient in their creation. Features such as sinkholes and caves are given added importance because they represent areas where greatest flow and discharge of water through subsurface pathways have occurred. The northern portion of the land within the Property is in the very lowest portion of the Edwards geologic section. While caves can be found in this unit, they are localized and generally the geologic unit acts to confine water in the Edwards Aquifer. The northern portion of the land within the Property, therefore, potentially recharges the Trinity Aquifer versus the Edwards Aquifer. The Trinity Aquifer is a source of water for many in north Bexar County and will act as one of the many sources of water that will be developed in the future for the City of San Antonio.

The southern portion of the land within the Property lies within the upper portion of the Edwards geologic section within one of the most sensitive units. While there was a lack of sensitive features at the surface, there is a potential for features in the shallow subsurface. This highlights the importance of Best Management Practices, the Integrated Pest Management Plan, and the Water Quality Monitoring Plan required hereunder.

An unnamed tributary of Elm Creek bisects the Property centrally from north to south. Therefore, it probably acts to recharge the Trinity Aquifer to the north and as water flows across the southern portion of the Property, it provides recharge to the Edwards Aquifer. As previously cited, streams and tributaries are the features that recharge a majority of the water to the Edwards Aquifer. Therefore, their buffering and sampling is critical to the successful protection of the water sources in the area.

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Figure 1***cross section***

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Cibolo Canyon Golf Course Environmental Management Plan	
Figure 2***VULNERABILITY MAP***	

3.5 Water Quality Management Zones

The Golf Courses shall be designed, constructed and operated in accordance with the water quality controls, management practices and monitoring requirements set forth in this PLAN in order to minimize any potential adverse effects of Golf Course construction and operation on the Edwards Aquifer, the Trinity Aquifer and other water resources.

To achieve this result, the Golf Courses may be managed through the creation of one or more Water Quality Management Zones ("WQ Management Zones"). The WQ Management Zones shall be designed to identify potential water quality risks for specific conditions present within areas of each Golf Course for purposes of preparing specific management practices that shall be implemented within each zone. The Golf Course designers and engineers shall be responsible for the identification and creation of WQ Management Zones based upon the proposed golf course layout and water quality risk factors.

The WQ Management Zones concept has several technical and practical advantages. Use of the WQ Management Zones allows for:

- Flexible development and maintenance of practices to protect water quality and healthy turfgrass.
- Consistent basis for long-term evaluation and monitoring of the success of this PLAN.
- Development and evaluation of practices to mitigate potential adverse water quality effects.

3.6 Identification of WQ Management Zones

Areas within the Golf Courses that contain similar environmental risk factors should be categorized in the same WQ Management Zone. The areas within a WQ Management Zone need not be physically contiguous, and instead should be based on water quality risk factors. All proposed WQ Management Zones shall be submitted to SAWS with the Design Plan (as hereinafter defined).

In developing the WQ Management Zones, water quality risk factors shall be identified and considered, including soils, proximity to surface water, depth to permeable bedrock, proximity to Sensitive Features (as hereinafter defined), topography and other relevant matters. Each WQ Management Zone should be designed to address the following processes potentially affecting water quality:

Subsurface leaching of compounds to groundwater.

- Drift of applied chemicals during initial application and volatilization.
- Movement of dissolved chemicals in surface runoff water.
- Movement of suspended particulate (e.g. granular) formulations in runoff water.
- Movement of eroded soils and sediment-bound compounds in runoff water.

The foregoing determinations shall be based upon manufacturers' recommendations and commercially-available information concerning chemicals proposed for application to the Golf Courses, and Developer may, but shall not be required to, perform laboratory testing or analysis of chemicals.

To make the WQ Management Zones concept viable, several practical considerations may be used to delineate the WQ Management Zones. These considerations include:

- If a fairway can be delineated into two zones, the more protective unit shall be used for the entire fairway. This conservative method of delineation (1) protects water quality; (2) maintains quality turfgrass; and (3) provides for consistent use of management practices.
- Greens and tees may be delineated in management zones different than the fairway on the same hole. Greens and tees have their own specific mechanical, nutrient, and pest and disease control strategies.
- Structural and vegetative controls may be incorporated into boundaries of the WQ Management Zones.

3.7 Best Management Practices

Each of the Best Management Practices required by this PLAN shall be tailored to the specific conditions and risks present within each WQ Management Zone.

4.0 REQUIRED DESIGN AND BEST MANAGEMENT PRACTICES

4.1 Golf Course Design Criteria

A "Design Plan" meeting the requirements set forth in this section shall be submitted to the SAWS Resource Protection and Compliance Department Director for approval prior to the scheduled pre-construction meeting and construction phase of each of the Golf Courses. The Developer may include the Design Plan as part of a Water Pollution Abatement Plan ("WPAP").

Under no circumstances shall Golf Course construction commence until SAWS has approved the Design Plan in writing, or is deemed to have approved the Design Plan. In the event that SAWS withholds its approval for any portion of the Design Plan, it shall specifically identify the basis for such disapproval, and such basis must relate to matters within the scope of this PLAN or otherwise within SAWS' regulatory jurisdiction.

4.2 General Principles

The Design Plan shall incorporate the following general principles:

- All "Sensitive Features" on the Golf Courses shall be preserved and protected, except as otherwise approved by SAWS and the TCEQ. For purposes of this PLAN, Sensitive Features shall be defined as any permeable geologic or manmade feature located on the Golf Courses where a potential for hydraulic interconnectedness with the Edwards Aquifer or the Trinity Aquifer exists, and rapid infiltration to the subsurface may occur. The identification of Sensitive Features shall be made utilizing established regulatory criteria, including the "TNRCC Instructions to Geologists for Geological Assessments" dated June 6, 1999, as amended or superceded from time to time. The Sensitive Features currently identified to be protected in the Design Plan are those features identified by the "Geological Arbitration Committee", as depicted on the Geologic Map attached as Exhibit "B" hereto.
- Golf Course holes shall be designed to provide the greatest buffer practicable between managed turfgrass areas and Sensitive Features. The design shall provide a minimum buffer zone for all Sensitive Features in an amount determined by SAWS to be appropriate under the attendant circumstances of such feature, but in no event less than those buffer zones set forth in the San Antonio City Code Aquifer Recharge Zone and Watershed Protection Ordinance, City Code Chapter 34, Article VI, Section 920, regardless of whether such ordinance would otherwise be applicable to the Golf Courses. SAWS may grant individual exemptions to the minimum buffer zone requirement set forth herein.
- The design shall incorporate and provide for adequate soil depths.

- All irrigation lakes located on the Golf Courses shall be designed to include a synthetic impervious liner to prevent subsurface migration of contaminants.
- The Golf Courses shall be designed to ensure that runoff from the Golf Courses may be sampled and analyzed in accordance with the Water Quality Monitoring Plan requirements set forth in Article V of this PLAN.
- The design shall include natural vegetative buffer zone strips around the perimeters of natural drainageways and 100-year flood plains.
- The Design Plan shall include topographic contour maps, showing lightly dashed lines for existing contours and solid lines for proposed contours, having a contour interval not greater than two (2) feet.
- For detention/filtration control devices, the Design Plan shall include a summary of calculations for runoff and sizing in accordance with TCEQ's Technical Guidance Manual.
- The design of erosion control and sedimentation facilities, including channels, storm sewer inlets, detention ponds and water quality facilities, shall be based on TCEQ's Technical Guidance Manual.
- Where practicable, the design shall direct overland flows into irrigation lakes for reuse, or overland flows will be directed into catch basins, vegetated filter strips, or other approved treatment facilities prior to leaving the Golf Course.
- The design shall include temporary rock/silt fence berms and other controls in major drainage pathways that may be impacted by construction activities.
- The design shall include a Computer Controlled Irrigation System ("CCIS") that interfaces with a digital weather station. The CCIS should be programmed to operate based on real-time Evapo-transpiration ("ET") rates collected from the on-site weather station. The CCIS should be programmed to terminate irrigation operations during rainfall events.
- The design shall promote the preservation of large native trees and associated understory vegetation, where practicable.
- The design shall incorporate underdrain systems for all tees and greens with discharge to grass-lined catchment treatment areas.

- The design shall incorporate sand filter basins (or approved equivalent) for treatment of stormwater runoff from maintenance barns, clubhouse areas, and parking areas.
- The design shall provide for a covered wash rack area that meets SAWS' criteria and that drains to an oil/water separator consistent with American Petroleum Institute specifications.
- The design shall provide for a leak detection alarm system for all aboveground storage tanks.
- The design shall provide for double-walled tanks and piping for aboveground fuel storage tanks with electronic inventory control.
- The design shall provide for 150 percent spill containment volume for aboveground fuel storage.
- The design shall minimize elements that encourage development of gullies, rerouting of streams, and changes to the natural surface and subsurface drainage.
 Where Golf Course grading creates potentially erosive flows, the design will incorporate structural features to reduce flow velocity and sediment.
- Cart paths shall be designed and located to control traffic in order to protect Sensitive Features.

4.3 Retention/Closed Loop Irrigation System

An alternate water quality pollution abatement system for capturing any pollutants generated by the Golf Courses is the establishment of an approved stormwater retention and irrigation system. Under this system, the design of the Golf Courses would provide for the capture of runoff from each Golf Course and routing the runoff to the irrigation lakes where the runoff would be used as irrigation water. In the event that a stormwater retention and recycling system is utilized on any part of the Golf Courses, the proposed design of the retention/closed loop irrigation system shall be included as part of the Design Plan.

Design alternatives for a stormwater capture/irrigation system shall include:

- Golf Course runoff may be captured in grass lined catchment basins and routed to the irrigation lakes via gravity based piping or pump systems.
- Golf Course runoff may also be captured in amenity lakes that are designed to
 provide additional storage capacity for Golf Course runoff. Captured runoff
 would be routed to the irrigation lakes via gravity based piping or pump systems.

 Golf Course runoff capture volumes will be based on TCEQ's Technical Guidance Manual, but in no case will the volume be less than one-half inch of runoff from the respective drainage area.

A stormwater capture/irrigation system may be utilized on an entire Golf Course or a portion of the Golf Course. Topography, location and number of irrigation lakes, and design of the Golf Courses are considerations that impact the location and practicality of this pollution abatement strategy. In the event that the design of the Golf Course incorporates such a system, the Developer may request that other pollution abatement requirements set forth in this PLAN be modified accordingly. For example, water quality monitoring, Trigger Level, and Corrective Action requirements applicable to the Golf Course surface water runoff may be adjusted if runoff is captured and directed to an irrigation lake that is sampled. Any such modifications shall require SAWS' prior written approval.

4.4 Vegetation Selection

Native and/or naturalized vegetation shall be incorporated into the design of the Golf Courses in areas that are not designated as play areas. In the play areas, landscape designers should select grasses that are best adapted to the local environmental conditions for the San Antonio, Texas climate. The selected grasses shall meet the necessary characteristics of play area yet permit the use of environmentally sustainable maintenance techniques.

As part of the Design Plan, a Turfgrass Management Plan meeting the requirements of Section 4.35 of this PLAN shall be submitted to the SAWS Resource Protection and Compliance Department Director for review and written approval. The plan shall identify types of grasses, locations of grasses and vegetation, and maintenance plans.

4.5 Sustainable Maintenance

The Design Plan shall incorporate integrated plant management and resource conservation practices that are environmentally responsible and efficient. Integrated plant management includes integrated pest management and emphasizes plant nutrition and overall plant health, as more fully described throughout this PLAN.

4.6 Recharge Features

All Sensitive Features at the Golf Courses shall be identified in the Design Plan, which shall include those Sensitive Features identified on Exhibit "B" attached hereto. An updated map identifying all Sensitive Features identified during construction shall be furnished to SAWS at the completion of construction of each Golf Course as part of the "as-built" plan submittal.

4.7 Maintenance Facilities

On-site maintenance facilities, storage areas for vehicles and off-road equipment often result in used oils, tires, batteries, cleaning solvents and other wastes. Other potential waste generators include restaurants and/or food service areas.

A waste management plan shall be developed for on-site maintenance facilities and submitted as part of the Design Plan. The plan shall address vehicle maintenance and repair operations, vehicle and equipment washing, fueling operations, and painting operations.

4.8 Restaurants and Food Service Areas

Restaurants and food service areas in the Golf Courses shall have an oil/grease trap at the facility of a type approved by SAWS. A maintenance plan for the oil/grease trap must be submitted as part of the Design Plan. Small concession stands where only prepackaged food items are sold shall be exempt from the oil/grease trap requirement.

4.9 Construction Requirements

Construction activities within the Golf Courses shall be performed so as to effectively control sediment, protect water resources and reduce disruption to wildlife, plant species and designated environmental resource areas.

No construction shall take place until all approvals required under applicable laws, the Services Agreement, if any, and this PLAN have been received or deemed received. Construction for each phase of the Golf Courses may commence once the Developer has demonstrated to SAWS that all approvals for such phase have been obtained.

For each Golf Course, SAWS shall be furnished copies of the final plans for the proposed Golf Course and such additional documentation as SAWS may reasonably request. Not later than forty-five (45) days following receipt of all documentation described in the preceding sentence, SAWS shall either acknowledge in writing that the proposed Golf Course plans and design are in compliance with the requirements of this PLAN or shall identify in writing the deficiencies which must be addressed prior to receipt of approvals for commencement of construction of such Golf Course. Failure by SAWS to identify in writing any deficiencies within such forty-five (45) day period shall be deemed approval by SAWS of the submitted documentation. Upon receipt of a notice of deficiency, the Developer must submit revised plans that address the deficiency and receive SAWS approval therefor in accordance with the procedures described in this paragraph prior to commencement of construction of the Golf Course. The basis for withholding approval by SAWS must relate to environmental protection matters within the scope of this PLAN or SAWS' jurisdiction.

Upon the completion of construction, the Developer shall submit as-built plans, and land surveys, to SAWS for all Golf Course improvements.

4.10 Qualified Contractor

Only qualified and competent contractors who are experienced in the special requirements of golf course construction shall be utilized in connection with the Golf Courses.

4.11 Schedule of Construction

A construction schedule shall be prepared and furnished to SAWS at the pre-construction meeting. The construction schedule should allow for the most efficient progress of the work while optimizing environmental conservation and resource management.

4.12 Golf Course Manager

A qualified and competent Golf Course manager shall oversee all construction in order to integrate sustainable maintenance practices in the development, maintenance, and operation of the Golf Courses.

4.13 Construction Requirements

Construction of the Golf Courses shall include the following controls to minimize adverse environmental impacts:

- Civil engineering construction plans prepared by the Developer or its assigns must be
 prepared under the supervision of a professional engineer licensed in the State of
 Texas. This will be witnessed by the engineer affixing his or her seal and signature to
 each plan sheet and any reports or calculations submitted to support the plans.
- Representative sampling of each borrow area used for offsite soils delivered to the Golf Courses shall be sampled for indicator pollutants to be approved by SAWS at their source prior to delivery to confirm that they are free of contamination. The Developer shall provide documentation identifying the origin of the imported soils.
- Where construction is to occur in a channel that drains greater than five (5) acres, a
 note shall be included in the construction plans specifying that the contractor shall
 remove spoil material from the channel of any creek or drainage way at the end of
 each work day.
- Temporary erosion control devices shall be used to mitigate offsite transport of runoff and sediment.

- Turfgrass or other protective cover (including vegetative mats) shall be established as soon as practicable after each part of the Golf Course construction is finished.
- In order to prevent erosion, mulches, matting, blankets or similar practices shall be utilized where necessary to control or minimize runoff until vegetation or long-term measures are in place.
- Newly constructed areas shall be shaped using swales, berms, and contours for temporary detention of runoff water and sediment to minimize concentrated erosive flows.
- Construction shall utilize sodding and long-term stabilization measures where necessary to prevent erosion.
- Small check dams or weirs shall be constructed to flatten upstream slopes and decrease the velocity of runoff.
- The Golf Course contractors shall construct temporary silt fences to stop movement of eroded soil from construction areas.
- Construction shall be phased so as to minimize impact to streams and geologic features.
- BMPs shall be inspected during construction and subsequent to construction. SAWS
 shall be furnished a copy of the certification from a registered engineer submitted to
 TCEQ that structural BMPs are constructed in accordance with the design and
 specifications.

4.14 Water Pollution Abatement Plan

Construction within the Golf Courses shall comply with Chapter 213 of the TCEQ's rules, as amended from time to time, including the preparation of one or more WPAPs.

The Developer agrees to prepare and submit a WPAP for each Golf Course to SAWS for approval simultaneously with submission of the WPAP to the TCEQ. In the event that it is ever determined that any portion of the Property is not subject to the TCEQ's rules, such determination shall not relieve Developer of its obligation to prepare WPAP(s) for review and approval by SAWS.

SAWS shall review and approve each WPAP in accordance with the standards set forth in Chapter 213 of the TCEQ's rules and the requirements of this PLAN. In the event that SAWS does not approve all or part of any WPAP, SAWS shall specifically identify the matter(s) for which approval is withheld and the basis therefore, which must relate to environmental matters

under the scope of this PLAN. SAWS and the Developer shall thereafter attempt in good faith to reach a mutually-agreeable solution as promptly as practicable.

4.15 National Pollutant Discharge Elimination System ("NPDES")

Construction activities within the Golf Courses that will result in the disturbance of five or more acres require a Storm Water Discharge Permit under Section 402 of the federal Clean Water Act (as amended). In accordance with the Clean Water Act, a Storm Water Pollution Prevention Plan ("SWPPP") shall be prepared that complies with the Monday, July 6, 1998 Federal Register, Part II, Environmental Protection Agency, Re-issuance of NPDES General Permits for Storm Water Discharges from Construction Activities in Region 6; Notice, as applicable and as amended from time to time. The SWPPP shall be present on site at all times for regulatory review and shall be adhered to in all respects. All required EPA postings shall be posted in a visible location and accessible to the public.

The Developer or contractor shall submit the SWPPP to the SAWS Resource Protection and Compliance Department, Construction Compliance Section prior to commencing regulated construction activities. SAWS shall retain the right to inspect all regulated construction activities without prior notice to confirm that SWPPP practices are adhered to in all respects.

4.16 Texas Pollutant Discharge Elimination System

Scheduled construction activities shall be subject to the applicable regulatory requirements of the Texas Pollutant Discharge Elimination System ("TPDES") program. SAWS shall have the right to inspect the Golf Courses routinely to confirm that all activities are in compliance with applicable TPDES requirements.

4.17 City of San Antonio Construction Ordinance No. 94002

The City of San Antonio Construction Site Ordinance No. 94002 ("Ordinance No. 94002") regulates the discharge of pollutants into the Municipal Separate Storm Sewer System pursuant to Federal Permit No. TXS001901. Ordinance No. 94002 provides that it is unlawful for any person to engage in construction activity that results in a measurable volume of sediment, soils, soils material, or pollutants entering the City's storm sewer system. Violations of Ordinance No. 94002 may result in a "Stop Work Order", civil injunctive relief, or fines and penalties.

The Developer and all contractors shall comply with Ordinance No. 94002.

The SAWS Construction Compliance Section of the Resource Protection and Compliance Department will conduct routine site inspections for compliance with Ordinance No. 94002. Failure to comply will result in enforcement action.

4.18 Impervious Cover

Impervious cover is one of the most important factors that can affect water quality and the watershed. Impervious cover can change the hydrologic cycle by:

- Reducing the ability of surface water to infiltrate.
- Increasing the velocity of runoff.
- Increasing the volume of runoff.
- Reducing the ability of soil to store water due to regrading.
- Changing evapotranspiration rates due to loss of vegetation in an area.

For purposes of this PLAN, "Impervious Cover" is defined as roads, parking areas, buildings, pools, patios, sheds, driveways, private sidewalks, and other impermeable construction covering the natural land surface. "Percent impervious cover" shall be calculated according to the methodology set forth in the Declaration of Restrictive Covenants attached as Exhibit "A" to the Services Agreement (the "Restrictive Covenants").

Each WPAP submitted to SAWS for review and approval with respect to any one or more of the Golf Courses shall specify (i) the area and percent of all existing Impervious Cover on the Golf Courses; (ii) the area and percent of all future Impervious Cover described in each approved WPAP for the Golf Courses which has not been withdrawn or canceled following approval, and (iii) the area and percent of the Impervious Cover described in the proposed WPAP.

4.19 Preservation of Sensitive Recharge Features

All construction activities within the Golf Courses shall preserve all Sensitive Features unless approved otherwise by the TCEQ. Buffer zones and other protective measures shall be maintained during all construction activities to protect Sensitive Features.

In the event that additional Sensitive Features are identified on the Golf Courses during construction, all related construction activities in the immediate area of the feature shall cease immediately. The Developer and/or contractor shall notify immediately the TCEQ and any other governmental entity with jurisdiction, and simultaneous notice shall be given to SAWS. The feature shall be protected immediately and subsequent construction shall incorporate temporary and permanent BMPs to protect the Sensitive Feature, as required by all regulatory agencies with jurisdiction. If SAWS and Developer do not agree as to whether a feature is a Sensitive Feature or the extent to which construction activities should be curtailed in response to the discovery of the potential Sensitive Feature, the "Geologic Assessment Team" (also known as the "GAC", as defined in the Restrictive Covenants) shall make such determinations.

4.20 Construction Waste

Construction waste is generated by the maintenance of vehicles, construction equipment and normal construction activities. These wastes include, but are not limited to, used oils, grease, tires, batteries, cleaning solvents, and empty containers. To the extent possible, all vehicle and equipment maintenance shall be performed in a maintenance/storage area. This area shall be constructed to contain any spills or releases. Used oils, grease, solvents and batteries shall be stored in a covered container until proper disposal off-site is completed in a timely manner. Spills or releases shall be cleaned immediately and disposed of in accordance with applicable regulations. All persons associated with maintenance activities shall be trained in pollution prevention practices. The construction superintendent shall be qualified, competent and "OSHA 40-Hour HAZWOPER" certified. All other construction related waste shall be disposed of in approved, covered, non-leaking containers within the maintenance/storage area and disposed of in a timely manner in accordance with applicable regulations.

4.21 Fuel Storage and Use

The storage of fuels in containers greater than five (5) gallons on the Golf Courses is prohibited during the construction phase of the Golf Courses. Mobile fueling stations (fuel/maintenance trucks) are permitted on the site only for short time durations while required fueling/maintenance of construction equipment is performed. The operator(s) of the fuel/maintenance equipment shall be trained in pollution prevention practices. Any spills on the site shall be cleaned immediately and disposed of in accordance with all applicable regulations. Spills greater than five (5) gallons shall be documented (product, quantity, location, date, time, etc.) and reported

immediately to the SAWS Construction Compliance Section, and to any other governmental entity with jurisdiction.

4.22 Water Supply Protection

Water shall be used during all construction activities for dust control, moisture applications to soils and road construction preparation. When water is delivered from a SAWS main to stand tanks or water trucks, an approved air-break tank or "RPZ" check valve shall be installed to provide backflow protection. Air gaps at the fill point of service trucks shall be in place to prevent back siphoning.

4.23 Materials Management

Pesticides, fertilizers, hydrocarbon-based products and waste from equipment maintenance, if not properly managed, may contribute to point-source and non-point source contamination of soil, surface water, and groundwater.

A materials management plan shall be submitted to SAWS for review and approval with the Design Plan. The materials management plan shall include the minimum requirements set forth in this Article IV.

4.24 Pesticides

Pesticides shall be stored in a lockable, concrete or metal building that allows for fire fighting access. The pesticide storage area shall be separate from other buildings or separated from areas used to store other materials, especially fertilizers. Shelving shall be plastic or reinforced metal. Metal shelving shall be kept painted to avoid corrosion. Wood shelving is prohibited because it may absorb spilled pesticide materials. Floors shall be seamless metal or concrete and sealed with a chemical resistant coating, and shall have a continuous sill to retain spilled materials. The floors shall not have drains, although a sump may be included.

Sloped ramps shall be provided at the entrance to the pesticide storage area to allow wheeled handcarts to move material in and out of the storage area safely. Exhaust fans and an emergency wash area shall be provided. The light/fan switch shall be located outside the storage area so that both are on when entering or leaving the storage area. An inventory of the pesticides kept in the storage building and the associated Material Safety Data Sheets ("MSDS") for the chemicals used in the operation shall be maintained on the premises. The inventory list and MSDS sheets shall not be stored inside the pesticide storage area itself, as this would make them unavailable in case of an emergency.

Pesticide containers shall be cleaned immediately upon emptying. Containers shall be properly cleaned by pressure-rinsing or triple-rinsing and the rinse water dumped into the sprayer as part of the make-up water. Non-rigid bags shall be shaken clean so that all dust and material falls

into the application equipment. The clean containers shall be stored in a clean area, out of the rain and weather, until they are disposed of in accordance with all applicable regulatory requirements.

Washwater from pesticide application equipment must be managed properly as it contains pesticide residues. The currently required BMP for this material is to collect it and utilize it as a pesticide in accordance with label instructions for that pesticide. This applies to washwater generated from both the inside and outside of the application equipment.

For small spills in the pesticide mixing and loading areas, absorbents such as cat litter or sand shall be used to clean up the spill and then applied as a top dressing in accordance with the label rates, or properly disposed of as waste. Large spills shall be remediated in accordance with all applicable state and federal regulatory requirements.

4.25 Fertilizers

Fertilizers shall be stored separately and away from solvents, fuels and pesticides since many fertilizers are oxidants. Fertilizers shall be stored in a concrete building with a metal or other flame resistant roof. Fertilizers shall always be stored in an area that is protected from rainfall.

Cleaning of the fertilizer storage area shall be performed by washing down the loading area or dry collection methods such as sweeping and vacuuming. Any washwater generated shall be collected and applied to the courses. Discharge of this washwater to storm drains is unlawful and prohibited.

Flammable pesticides and fertilizers shall be separated from non-flammable products. Dry bags must be stored on raised pallets to prevent contamination by liquid spills. Labels should be clearly visible.

4.26 Secondary Containment

Areas where pesticides or fertilizers are stored, mixed and loaded, or where containers or equipment for such materials are rinsed, must have proper secondary containment to collect spills and facilitate product recycling. The volume of the secondary containment must be not less than 150 percent of total storage volume. All secondary containment areas shall be included in the WPAP.

Secondary containment structures shall be constructed of concrete or other approved materials. The floor shall be sloped to a sump where liquid can be pumped into a holding tank for recycling. Due to concrete's porosity and low chemical resistance, concrete coming in contact with pesticides and fertilizers shall be protected with a chemically resistant coating or liner.

Pesticide, fertilizer, and other chemical operations shall be isolated from other operations such as material storage and equipment and golf cart maintenance.

4.27 Specific Management Requirements

The following additional management requirements shall be applicable to the Golf Courses:

- All liquid accumulated in containment structures shall be pumped from the structure and placed in a container for proper disposal or recycling.
- Gravity underground drains are prohibited in secondary containment structures.
- Buried pits or underground storage of hazardous materials, including, but not limited to, petroleum products, are prohibited.
- Sumps shall be emptied and cleaned daily.
- Pesticide and chemical mixing, loading and equipment washing shall be performed under a roof and in a structure elevated above storm water runoff.
- The loading area shall always be clean to prevent tires of vehicles tracking residues out of the loading area.
- If vehicle tires should come in contact with residues, they shall be cleaned before driving off of the loading pad.
- Empty containers shall be promptly rinsed and properly stored prior to disposal or recycling.
- All instructions provided by the manufacturer for all chemicals shall be strictly adhered to by maintenance personnel.
- All bulk storage tanks for chemicals shall have lockable valves.

4.28 Used Oil, Antifreeze and Lead-Acid Batteries

Used oil and antifreeze shall be collected in marked containers and offered for recycling. Antifreeze must be disposed by a licensed recycler in accordance with all applicable laws.

Lead-acid storage batteries, such as used in golf carts and for starting other equipment, must be disposed by a licensed recycler in accordance with all applicable laws.

4.29 Solvents and Degreasers

Solvents and degreasers are generally flammable and toxic and shall be stored in lockable metal cabinets in an area with adequate ventilation, away from ignition sources. They shall not be stored near an area where welding or other similar activities are performed, nor shall they be stored with pesticides or fertilizers. An inventory of the solvents stored and the MSDS sheets for these materials shall be kept on the premises, but not in the solvent storage area. Any emergency response equipment recommended by the manufacturer of the solvent shall remain accessible at all times, but not inside the area itself.

Solvents and degreasers shall be used over a collection basin or pad that is ample to collect all used material. Solvents shall never be allowed to drain onto pavement or soil, or discharge into storm drains, sewers or septic systems, even in small amounts. Routine discharge of even small amounts of solvents can result in the accumulation of contaminants in soil or ground water and is prohibited.

Used solvents and degreasers shall be collected, placed into containers marked with the contents and the date, and then picked up by a licensed hazardous waste management firm that will properly recycle or dispose of these materials in accordance with all applicable state and local regulations.

4.30 Aboveground Storage Tanks

The Design Plan shall identify all proposed Aboveground Storage Tank Systems ("ASTs") to be located at the Golf Courses. ASTs shall comply with the state rules and regulations. All ASTs shall be placed within an impervious containment basin designed to capture and retain a minimum of 150 percent of the storage capacity of the AST. All valves, pipes, fittings and other controls connected to the AST shall be placed within the containment basin. A spill containment kit and approved absorbent materials designed to capture and retain potential spills shall be clearly labeled and displayed within 20 feet of the containment area. SAWS shall have the authority to inspect all ASTs at all reasonable times.

If a fuel storage facility is utilized, only ASTs with appropriate controls approved in writing by TCEQ will be allowed. The above ground fuel storage tank facility must meet the following minimum design and operation requirements:

- Double walled.
- Electronic inventory control.
- Leak detection alarm system.

- Provisions for a 150 percent spill containment volume for total volume of above ground fuel storage within the containment structure.
- The fuel dispenser shall be located inside the containment structure for the AST.
- The vehicle fueling area will be constructed of sloped impervious concrete
 draining into a grated spill recovery sump (sump volume to hold not less than 150
 percent of the largest equipment fuel tank to be fueled) or filtration basin to
 prevent fuel spills from entering the environment.
- Any discharge of rain water from the spill recovery sump shall be authorized by the site superintendent only after a determination has been made that there is no contamination of rain water through sampling or other objective means. Recordkeeping of all sampling results shall be kept and shall remain available for inspection by SAWS at all reasonable times.
- A spill response kit shall be maintained at the facility.
- All personnel who will be fueling equipment shall be trained concerning proper pollution prevention, proper fueling procedures and spill response kit use.
- Records shall be kept concerning all fuel deliveries, consumption and spills.
- A SAWS representative from the Resource Protection and Compliance Department will inspect the facility at least once each year to review records and assure that the fueling facility is operated in a manner that will not adversely impact the environment.

4.31 Underground Storage Tanks

The installation or operation of underground storage tanks for hazardous materials including, but not limited to petroleum products, permanent or temporary, at the Golf Courses is prohibited.

4.32 On-site Sewage Facilities

The installation or operation of septic systems and other on-site sewage facilities are prohibited within any portion of the Golf Course(s) located on the southern portion of the Property, as defined by the northeast to southwest trending fault identified in the Vulnerability Assessment Report.

The design of any septic systems or other on-site sewage facilities proposed within other areas of the Golf Course(s) must be approved by SAWS. In addition, SAWS shall be authorized to enter the Property at any time without prior notice to inspect the on-site sewage facilities. At the time

of entry to the Golf Courses, SAWS shall endeavor to provide notice to any representative of the Golf Courses that may be present, but such person's consent shall not be required for SAWS to enter the Golf Courses for such purposes. Based upon the results of such inspections, SAWS shall have the right to perform leachate analysis and other water quality sampling or monitoring related to the operation of the on-site sewage facilities. SAWS shall coordinate with the operator of the Golf Course to minimize any disruption to play associated with such inspections, sampling and/or monitoring activities.

4.33 Integrated Pest Management

4.33.1 Insects

Of the numerous insects residing in golf course turf, very few actually injure the turfgrass. The few that do injure the turfgrass are classified as burrowing and root-feeding or shoot feeding. Several species of white grub, mole crickets and older billbug larvae feed on turfgrass roots. Armyworms, sod webworms, cutworms, leafhoppers, spittlebugs, chinch bugs and adult and larvae billbugs feed on the aerial shoots. Several insects are preferential feeders, which limit the injuring to the turfgrass. Others will injure the turfgrass as they feed on stems, roots and leaves. Burrow bees, wasps and ants generally are not considered a major turfgrass pest.

4.33.2 Nematodes

Nematodes are microscopic round worms that reproduce eggs and molt four times prior to becoming an adult. All soils contain nematodes and most are harmless, however a limited number, at some time during their life, parasitize turfgrasses. Plant parasitic nematodes are classified based on their feeding habits and are ectoparasitic or endoparasitic.

The tolerance levels of turfgrasses to parasitic nematodes range and is dependent on several factors. Areas of turfgrass damage are noted by an irregular shape and will vary in size. Aerial shoots often change from green to light green, to yellow and subsequently to brown. In addition, the turfgrass will appear stunted. Roots will be very short with few, if any, root hairs. Brown or red lesions may be visible at the tips and the root may appear swollen. The turfgrass root systems under attack from these nematodes will be severely weakened and therefore, not able to take up nutrients from the soil.

4.33.3 Weeds

Weed control is a significant part of the overall turfgrass program as many are prolific seed producers. Water, wind, maintenance equipment and golfers may transport seeds and therefore, spread weeds throughout the courses. Topsoil and straw used to mulch soil surfaces may also contain plant segments capable of growing into a mature weed.

There are two major groups of weeds, based on plant form, that are of concern to the aesthetic of the turfgrasses. These two groups are weed grasses and broadleaf weeds. Weed grasses, such as crabgrass, dallisgrass and goosegrass are monocots, which emerge from a seed with a single seeding leaf. The leaves of monocots display parallel veins. Dicots, which include dandelions and white clover, have two seedling leaves as they emerge from the soil. The veins of a dicot plant form a network-like pattern.

The weeds are further subdivided into five groups based on their season growth: summer and winter annual weed grasses, summer and winter annual broadleaf weeds, and perennial weeds. Summer annual weed grasses germinate from seed and compete with turfgrass for available moisture, nutrients, light and space. These aggressive weeds begin to emerge from a seed in the spring and grow very fast during the summer months. By the fall, these weeds have completed their life cycle and die. Winter annual weeds germinate late in summer, fall and winter. These plants usually complete their life cycle in the spring.

Summer annual broadleaf weeds emerge from seed in the spring and enter turfgrass in the summer months. Winter annual broadleaf weeds invade cool season turfgrasses and complete their life cycle in the spring. Perennial weed grasses and broadleaf weeds live for more than two years.

4.33.4 Diseases

Diseases can adversely affect turfgrasses and are generally a result of poor nutrition, soil compaction, extreme temperatures, drought and/or excessive rainfall. In addition, turfgrasses are injured physically by divots, shoe spikes, golf cart tires and hydraulic fluid leaks. Injury from physical means often resemble diseases. Most turfgrass diseases are caused from fungal parasites or pathogens. Diseased turfgrasses display bleached leaves, discolored spots or lesions on the leaves and/or depressed circular areas of blighted turfgrass.

The biological control of turfgrasses consists of utilizing other living organisms to prevent or suppress the pathogen growth in plants, thatch or soils. Microorganisms suppress pathogens by occupying space and preventing contact, reducing the availability of shared energy sources, and by producing toxins that restrict pathogens' growth rate. Biological controls include certain composts that can also suppress some turfgrass diseases.

4.34 Pest Control Requirements

An Integrated Pest Management Plan shall be prepared and submitted to SAWS and TCEQ for approval as part of the WPAP. An integrated pest management system relies on preventing and controlling pests (e.g., weeds, diseases, insects) in which monitoring is utilized to identify pests, action thresholds are identified, management options are evaluated, and the most environmentally-beneficial control is implemented. For purposes of this PLAN, all references to "pesticides" shall include fungicides, insecticides, nematicides, herbicides and any other

chemicals used to control pests, weeds, or disease. The Integrated Pest Management Plan shall include the following general pest and disease control components:

- Documentation of action thresholds and turfgrass quality guidelines.
- Maintaining permanent paper or electronic records of practices and their relative success.
- Identification of application rates, time of application, and method of application to meet quality goals. The information shall be specific to each WQ Management Zone.
- Selecting appropriate pesticides based on label information and chemical and site characteristics limiting mobility.
- Reducing the frequency, extent of application, and the amounts of pesticide applied. Reducing the frequency and extent of application is accomplished by using lower rates of application and alternate pest and disease control.
- Using buffer zones and appropriate set backs from surface water and environmentally-sensitive features.
- Controlling the timing of pesticide application in relation to precipitation.
- Maintaining healthy, dense turfgrass.
- Using appropriate pesticide technology for application, clean-up, and disposal of containers.
- Provide staff training on the Edwards Aquifer in general, and practices to be employed to prevent degradation thereof. Training will be performed annually.
- A Texas Licensed Pesticide Applicator shall be employed.
- Covered chemical mixing center with spill containment.
- Mix only amount of pesticide required for affected area.
- No spray application of chemicals during windy conditions.
- Store chemicals in temperature controlled facility if recommended by manufacturer with access limited to authorized personnel.

- Maintain chemical inventory and keep records of chemical use to balance inventory.
- Utilize insect traps to aid in determining what pests are present.

4.34.1 Least Toxic Pest Control Strategy

The Integrated Pest Management Plan shall provide for use of the least toxic control approach to address pest problems. This approach requires that once an action threshold for a specific pest is reached, the least toxic, effective control available will be used to reduce the pest population to acceptable levels. The control measures set forth in the Integrated Pest Management Plan shall provide for the introduction of natural pest enemies (e.g., parasites and predators), utilizing syringing techniques, improving air movement, soil, aerification techniques and mechanical traps prior to chemicals. The Integrated Pest Management Plan shall provide that chemical control strategies shall be utilized only when other strategies are not effective.

The Integrated Pest Management Plan shall identify the combination of control strategies that will be utilized to suppress pest populations with minimal environmental impact. Control measures include biological, cultural, physical, mechanical and chemical methods. The Integrated Pest Management Plan must include an hierarchy of agronomic, cultural, biological, mechanical and chemical controls.

4.34.2 Selection of Pesticides

A list of all proposed pesticides shall be included in the Integrated Pest Management Plan, along with the proposed maximum application rate, which shall not exceed manufacturer's recommendations.

Table 1 identifies pesticides currently commercially available and their leaching potential. The selection of pesticides shall be based on leaching potential, soil pH, volatization, microbial decomposition and photodecomposition. Only pesticides approved by SAWS in writing may be applied to the Golf Courses. This PLAN shall not be construed as authorizing the use of the pesticides set forth in Table 1.

Table 1 PESTICIDE LEACHATE POTENTIAL CHART

Example Trade Name	Common Name	Index	Rate
Fungicides			
Aliette	Fosetyl-AL	25	17.4
Banner	Propiconazole	45	1.5
Banol	Propamocarb	51	7.24
Bayleton	Triadimefon	43	1.3
Chipco	Iprodione	33	2.5
Cleary's 3336	Thiophanate methyl	31	2.7
Curalan	Vinclozolin	20	2.7
Daconil	Chlorothalonil	46	19.6
Dyrene	Anilazine	31	5.4
Fore	Mancozeb	36	8.7
Koban	Etridiazole	65	6.5
Manzate	Maneb	56	13
Rubigan	Fenarimol	51	2
Subdue	Metalaxyl	50	1.36
Terraneb	Chloroneb	51	7
Insecticides or Nematicid	s		
Astro	Permethrin	12	0.9
Award	Fenoxycarb	19	1.5
Baygon	Propoxur	76	8.1
Crusade	Fonofos	37	3.9
Mocap	Ethoprop	55	4.9
Nemacur	Fenamiphos	36	10
Oftanol	Isofenphos	44	1.9
Orthene	Acephate	36	3
Proxol	Trichlorfon	52	8.16
Sevin	Carbaryl	39	2.1

Тетро	Cyfluthrin	0	0.09
Triumph	Isazofos	44	2
Turcam	Bendiocarb	38	4.1
Herbicides			
Aatrex	Atrazine	52	2
Acclaim	Fenoxaprop	0	0.18
Asulox	Asulam	47	2
Balan	Benefin	36	3
Banvel	Dicamba	54	0.5
Barricade	Prodiamine	1	0.75
Basagran	Bentazon	36	2
Betasan	Bensulide	44	10
Devrinol	Napropamide	46	3
Dimension	Dithiopyr	20	0.5
Gallery	Isoxaben	44	1
Illoxan	Diclofop-methyl	10	1.5
Image	Imazaquin	58	0.5
Kerb	Pronamide	34	1.5
МСРР	Mecoprop	61	1.75
Methar	DSMA	41	5
MSMA	MSMA	27	3
Pendulum	Pendimethalin	18	3
Pennant	Metolachlor	22	4
Princep	Simazine	54	2
Prograss	Ethofumesate	41	1
Ronstar	Oxadiazon	36	3
Roundup	Glyphosate	36	4
Sencor	Metribuzin	48	0.5
Surflan	Oryzalin	44	3
Treflan	Trifluralin	32	3

Tupersan	Siduron	64	10
2,4-D	2,4-D	41	0.75

Index: scale 0 to 100, 0 = very low leaching potential and 100 = very high leaching potential.

Rough guideline: pesticides with a PLP Index <40 have a low leaching potential compared to those with a PLP Index >70, indicating that potential leaching is a concern.

Rate: The maximum recommended application rate expressed as pound(s) active ingredient per acre.

4.34.3 Specific BMPs for Pesticide Applications

The Integrated Pest Management Plan shall include the following specific BMPs for pesticide applications to meet environmental goals:

4.34.3.1 Management Options

Management options for control of pests and diseases shall include a well-balanced program of cultural, mechanical, structural, biological and chemical control practices. Using a combination of practices (1) reduces the reliance on pesticides to control pests and diseases; (2) reduces local resistance of pests and diseases to specific compounds; and (3) reduces site loading with chemical compounds.

4.34.3.2 Action Thresholds

Action levels for pests shall be included in the Integrated Pest Management Plan. Establishing action thresholds permits control of pests and reduces the total quantity of pesticides applied in a given area. Another factor includes the use of turfgrass species and cultivars resistant to known pests and diseases. Early detection of pest problems allows for proactive use of alternate control options. Applying pesticides only when and where necessary significantly decreases chemical loading and adverse effects on water quality and the environment.

4.34.3.3 Follow Labels

Pesticides shall be applied only by or under the direct supervision of properly registered, certified, and trained personnel and only in accordance with label instructions. All pesticide use shall comply strictly with local, state, and federal regulations.

4.34.3.4 Buffer Zones

The Integrated Pest Management Plan shall provide for no pesticide or fertilizer applications in buffer zones. In addition to the general buffer zone criteria, the Integrated Pest Management

Plan shall prohibit the application of persistent and mobile pesticides in areas near surface water, Sensitive Features, steep slopes, offsite drainage ways, impervious surfaces (e.g., cart paths), or on thin soils.

4.34.3.5 Frequency, Amount and Location of Applications

The Integrated Pest Management Plan shall minimize the frequency and extent of pesticide applications. Reducing the frequency and extent of pesticide applications to turfgrass are two of the most effective practices used to reduce potential adverse effects on the environment and water quality. Combining cultural and mechanical practices with chemical control reduces the frequency of chemical applications. Reducing the number of preemergent applications of herbicides and making applications only to areas with known problems reduces the total environmental load for each pesticide.

Proper application rates, equipment selection and calibration, and careful application to the target site ensures effective use of the applied pesticide. Spot applications shall be used to reduce the amount of chemical applied to turfgrass and to limit total environmental loading. Application of preemergent herbicides shall be applied only to areas with known infestations of weeds reduces the extent of herbicide application. The Integrated Pest Management Plan shall also provide for the placement of pesticides below the soil/thatch surface, and "watering-in" to reduce exposure to runoff process and enhance soil adsorption.

Controlling the timing and amount of a pesticide application in relation to local environmental conditions, especially rainfall, determines the potential for offsite movement and onsite decomposition. The Integrated Pest Management Plan shall restrict pesticide applications prior to anticipated storm events in order to reduce surface and subsurface losses of pesticides in accordance with the criteria set forth below. The following precipitation criteria shall be used in the Integrated Pest Management Plan to schedule pesticide applications:

- Pesticides shall not be applied if, at the time of application, there is greater than a 30 percent probability of rain occurring on the day of the scheduled application.
- Pesticides shall not be applied if, at the time of application, there is greater than a 35 percent probability of rain occurring on the day following the scheduled application.
- Pesticides shall not be applied if, at the time of application, there is greater than a 45 percent probability of rain occurring two days following the scheduled application.

Drift losses of pesticides can be deposited offsite and potentially affect water quality. Drift losses of applied pesticides shall be minimized by (1) determining wind speed and direction; (2) assessing air turbulence or stability; (3) optimizing droplet density and size distribution; (4)

evaluating evaporation rate; (5) controlling the height and swath pattern of spray delivery; (6) controlling volume and amount of pesticide carrier solution; and (7) controlling the proximity of application to sensitive areas with nontarget organisms. Loss of wildlife or aquatic species shall be avoided by restricting application of chemicals with high toxicity during critical migratory or lifestage periods.

4.34.3.6 Risk Assessment

Assessment of potential offsite transport of chemicals by runoff or leaching loss prior to application provides essential information on selection of pesticides appropriate for a specific site. The Integrated Pest Management Plan shall identify the pesticides proposed for application to the Golf Courses and areas on which application is proposed. The Integrated Pest Management Plan shall prohibit the application of pesticides in buffer zones for Sensitive Features and other areas that have a greater potential for impacting water quality. The identification of areas which merit additional protection through the prohibition of pesticides is subject to the approval by SAWS, to be provided in connection with its review and approval of the WPAP and/or Integrated Pest Management Plan.

4.34.3.7 Equipment Maintenance and Calibration

Proper equipment maintenance and calibration is essential for even applications at the intended volumes. All label instructions, storage requirements, and regulations shall be followed to insure safe handling of pesticides. Proper mixing, handling, and loading prior to application will reduce fill-site contamination. Closed systems for loading and mixing pesticides shall be used to prevent contamination of the site and nearby waters. Good housekeeping practices shall be used in loading areas to ensure that any spilled pesticides are not exposed to surface runoff or leaching.

4.34.3.8 Proper Disposal

Proper disposal of unused chemicals and containers will ensure safety of the user, water resources, and non-target organisms. Pesticide applicators shall avoid chemical exposure by safe handling practices including use of protective clothing, respirators, gloves, and shoes.

4.34.3.9 Chemigation

The Integrated Pest Management Plan shall identify whether chemigation is proposed for use at the Golf Courses and the extent of such proposed chemigation. The Integrated Pest Management Plan shall require the use of anti-back-siphoning devices in the equipment to reduce the potential for pesticide contamination of groundwater and other water supplies during irrigation. Pesticides should be applied through irrigation equipment only when appropriate and when specific label instructions are available. Environmentally safe chemigation practices that shall be included in the Integrated Pest Management Plan include:

- Flushing of injection equipment to prevent pesticide accumulation.
- Flushing the irrigation system after pesticide injection.
- Using properly calibrated equipment.
- Preventing runoff of the mixture of irrigation water and pesticide.
- Avoiding application to permanent surface water, semi-permanent standing water, or near sensitive areas.
- Periodic monitoring of equipment to ensure proper application to the intended target.

4.34.3.10 Periodic Review

Periodic review of the success of pest and disease management strategies and program is essential. The Integrated Pest Management Plan shall provide for periodic review of (1) management objectives; (2) the success of control practices; (3) new problems; and (4) results of water and soil monitoring programs. All reviews and results shall be made available to SAWS.

4.34.3.11 Recordkeeping

Detailed records shall be kept for not less than three years identifying all types, amounts and locations of pesticides applied to the Golf Courses.

4.35 Nutrient Practices

Fertilizers applied to golf courses contain nutrients (e.g. nitrogen, phosphorus and potassium). These are the primary nutrients most often applied to turf grass. Nitrate is the nutrient posing the most significant threat to water quality. Phosphorus losses are associated with sediment transport and is, therefore, a factor during the construction of the Golf Courses. Nitrogen can be transported by surface runoff, especially if applied prior to a rain event of if there is excess irrigation. As the time between application of the product and runoff increases, the amount of nitrogen subject to transport decreases.

The leaching potential of nitrate is reduced if turfgrass is properly maintained. The potential for leaching increases when nitrogen is applied in excess of individual plant requirements or subsequent to a significant rain event. In addition, drought or high salinity may increase nitrate leaching. To reduce the possibility of nitrate losses, slow release nitrogen sources shall be used. Timing of the application of the nitrates, coupled with limiting irrigation to the amount needed by the turfgrass is the most effective method to minimize leaching capabilities.

Healthy turfgrass roots are ideally suited to allow for uptake of these nutrients from the soils. Healthy turfgrasses have root systems that are extensive, fibrous and contain a large surface area. All nutrients are mobile inside plants, but the mobility in soil varies among the nutrients. Soils rarely supply the needed nitrogen to support high quality, wear resistant turf. The amount of nitrogen required varies by the type of turfgrass. Excess nitrogen fertilization will result in poor turfgrass rooting which allows for a greater susceptibility for disease to attack the plant.

Turfgrasses deficient in nitrogen often appear stunted, with short leaves and lack of color. Older leaves may first turn pale green in color, followed by a yellow color as the deficiency symptoms progress toward the base of the blades.

Phosphorus is very important in the transfer and storage of energy within the turfgrass. In addition, phosphorus-containing compounds have an effect on the genetic information. Phosphorus is relatively immobile in most soil types and therefore is less likely to move in soil solution and leach, as compared to nitrogen. However, phosphorus use can pose a threat to the quality of surface water if fertilizers are not applied properly and in the correct locations.

Potassium is associated with several processes of turfgrass. It activates enzymes, is involved with photosynthesis and helps regulate the stomates on the exterior of the turfgrass, which is responsible for releasing water from the plant into the atmosphere. Turfgrasses with low potassium are not very tolerant to the stress of either high or low temperatures or even drought.

4.35.1 Required Nutrient Practices

A Nutrient Management Plan shall be submitted with the WPAP (as part of the Integrated Pest Management Plan or otherwise) to SAWS for review and approval. The Nutrient Management Plan shall incorporate the following BMPs:

- Identification of application rates, time of application, and method of application to meet quality goals. The information shall be specific to each WQ Management Zone.
- Use of soil and tissue tests to establish proper application rates.
- Use of nutrient application history or credits for all sources of nitrogen.
- Sampling to analyze soils to determine chemical content and to set fertilizer
 application rates so as to correspond to nutrient uptake.
- Monitor and maintain thatch level.
- Conduct top dressing to enhance thatch layer.
- Periodic soil aerification. Penetrations into soil profile shall not exceed 50 percent of soil profile.
- Establish nutrient budgets for all sources of nitrogen and phosphorus.
- Minimize the total input of fertilizers.
- Utilize buffer zones and set backs from surface water and environmentallysensitive features.
- Control the timing of fertilizer applications in relation to precipitation events.
- Use of appropriate application technology including multiple low rate applications, granular formulations, proper equipment calibration and maintenance, proper disposal of unused fertilizer, and no application to bare soil or impervious surfaces.
- Maintenance of healthy turfgrass using appropriate irrigation, pest, and compaction control strategies.

4.35.2 Establish Nutrient Budgets

The Nutrient Management Plan shall include complete nutrient budgets for each WQ Management Zone fairway, green, and tee. The budgets shall include the following components:

- Quantifying the total input of fertilizers and nutrients: inorganic, organic, and irrigation water.
- Use of soil tests, tissue tests, and application history or nutrient credits to establish proper application rates. Clipping management is a part of nutrient credits.

The timing of fertilizer application will depend on weather conditions and stage of turfgrass development. Fertilizers are to be applied only commensurate with turfgrass need. Nitrogen or phosphorus applied in excess of turfgrass uptake ability can be lost in runoff, interflow, drainage, or leachate, and is prohibited.

4.35.3 Reduction of Fertilizer Input

Fertilizer applications shall be based on need, not calendar dates. Using appropriate (and not excessive) rates of nitrogen and phosphorus to maintain nutrient levels to sustain turfgrass quality is one of the primary BMPs to protect water resources. The following are additional general requirements that shall be followed concerning the timing of fertilizer applications that shall be incorporated into the Nutrient Management Plan:

- The optimum time of application depends on turfgrass species and weather, soil
 conditions, and chemical formulation of the fertilizer. Application of nitrogen
 after turfgrass uptake of nitrogen has ceased is prohibited.
- Fall applied inorganic nitrogen and residual soil nitrates are at risk of leaching
 past the root zone during the fall, winter and early spring, especially on areas with
 dormant bermudagrass. Fall or winter application of nitrogen shall only be used
 on areas overseeded with cool season grasses.
- Fairway fertilizer applications to bermudagrass shall be made only when soil temperatures are at least 65 degrees at a soil depth of two inches.
- Light irrigation or "watering-in" after application shall be employed to reduce runoff and leaching losses of fertilizers.
- · Over-application of any form of nitrogen is prohibited.
- Drift losses of nutrients can be deposited offsite and potentially affect water quality. Drift losses of applied nitrogen shall be minimized by (1) determining

wind speed and direction; (2) assessing air turbulence or stability; (3) optimizing droplet density and size distribution; (4) evaluating evaporation rate; (5) controlling the height and swath pattern of spray delivery; and (6) controlling volume and amount of applied nutrient carrier solution.

4.35.4 Turf/Leaf Tissue Analysis

The Nutrient Management Plan shall require turf grass/leaf tissue analysis on not less than a quarterly basis. Analytical results shall be made available to SAWS.

Plant tissue samples shall identify the amount of nitrogen and phosphorus in plants. This data, combined with of an evaluation the aesthetics of the turf, will determine the next set of fertilizer application rates which will based upon nutrient deficiencies.

Fairway plant tissue parameters to be analyzed shall include, at a minimum, phosphorus and nitrogen. Sampling results shall be incorporated into the nutrient budgets.

4.35.5 Soil Analysis

Applications of fertilizers at rates higher than those recommended by soil tests, plant tissue analysis, or those estimates based on realistic growth requirements, increases the risk of off-site nutrient movement by surface runoff or leaching, and is prohibited. Soil tests shall be taken regularly to determine specific nutrient requirements. All soil testing results shall be furnished to SAWS.

Fertilizer applications shall be based on plant tissue analysis, soil tests, soil temperatures, conditions of turfgrass, and weather conditions. Soil test results will aid in the development and modification of the nutrient budget.

4.35.6 Use of Slow Release Formulations of Nitrogen

Except as otherwise approved by SAWS, the Golf Courses shall utilize slow release fertilizers, which reduce environmental impacts resulting from losses of nitrates. However, the release of available nitrogen from the slow release fertilizers must match the time of active turfgrass uptake. Nitrogen released from slow release formulations during turfgrass dormancy is subject to long-term losses in leachate and runoff. Over-application of slow release and organic forms of nitrogen is prohibited in order to reduce the long-term potential for both surface water and groundwater contamination.

The application of liquid fertilizers to the Golf Courses is permitted only under terms and conditions approved in advance by SAWS.

4.35.7 Buffer Zones and Set Backs

The Design Plan shall include the use of buffer zones adjacent to surface water areas and areas with environmentally-sensitive features. Buffer zones of untreated vegetation, especially riparian vegetation, are extremely effective for removal of nutrients in runoff, interflow and percolating water.

No pesticide and fertilizer applications shall occur in buffer zone areas, except as may otherwise be approved in writing by SAWS.

In addition to the general buffer zone criteria, the application of mobile nitrogen fertilizers is prohibited in areas near surface water, recharge features, steep slopes, offsite drainage ways or on thin soils.

4.35.8 Control the Timing of Fertilizer Applications in Relation to Precipitation Events

Research on turfgrass and water quality demonstrates that major runoff and leaching losses of nitrogen, phosphorus, and pesticides will occur if rain events occur on the day of application or the day after application. The following criteria shall be incorporated into the Nutrient Management Plan and shall be utilized to schedule fertilizer applications:

- Fertilizer shall not be applied if, at the time of application, there is greater than 30 percent probability of rain occurring on the day of the scheduled application.
- Fertilizer shall not be applied if, at the time of application, there is greater than 35
 percent probability of rain occurring on the day following the scheduled
 application.
- Fertilizer shall not be applied if, at the time of application, there is greater than 45
 percent probability of rain occurring two (2) days following the scheduled
 application.

Light irrigation or "watering-in" after application shall be utilized to reduce the risk of runoff and leaching losses of fertilizer.

4.35.9 Use Appropriate Application Technology

Application techniques that reduce surface and leaching losses must be included in the Nutrient Management Plan. These techniques include:

 Incorporation, placement below the soil/thatch surface, and "watering in" of fertilizer reduces fertilizer losses in runoff and enhances soil adsorption.

- Frequent applications at reduced rates. This practice reduces the total load of nitrogen available for surface and subsurface losses and increases the efficacy of turfgrass uptake.
- Granular formulations shall be used whenever possible as opposed to surface applied liquid formulations of nitrogen.
- Application of fertilizers shall never occur on bare soil surfaces or impervious surfaces such as cart paths or maintenance roads.
- Maintenance and calibration of all application equipment is essential to provide for proper placement and rate of nutrient delivery. Improper calibration and equipment maintenance will result in over- or under-application and uneven distribution of nutrients and are prohibited.
- Maintenance of clean loading pads and clean up of any fertilizer spills in the maintenance areas is required.
- Disposal of granular fertilizer sacks, liquid fertilizer containers, and unused fertilizer shall be disposed in accordance with all applicable regulatory requirements. Plastic containers shall be triple rinsed prior to disposal.

4.35.10 Recordkeeping

Detailed records shall be kept identifying all forms and sources of nutrients applied to all turfgrass in order to determine loading rates of fertilizer application. Records of nutrient applications shall include:

- Types and amounts of commercial fertilizers.
- · Whether clippings are returned to fairways and roughs from tees and greens.
- Available nutrients in irrigation water. The amount of irrigation water for a given area and concentration of the nutrient in the water is needed to determine the total mass of nutrient applied.

4.36 Turf Grass Management

The goal of irrigation is to provide the minimum amount of water required to produce the desired playing characteristics. Among the factors that are important to water need are grass selection and installation, plants in non-turf areas, irrigation zoning, determining when to water, and maintenance.

4.36.1 Turf Selection and Installation

The Design Plan shall identify all proposed turfgrasses for the Golf Course Golf Courses.

"Hybrid Bermuda Grass" is the turf selected by most golf courses in the South Central Texas area. It is well adapted to local environmental conditions and offers good playing characteristics. Baseline irrigation and pesticide practices are well documented.

If "Hybrid Bermuda Grass" such as Tifdwarf for greens and Tifway for tees and fairways are not selected, the alternative must be justified by advantages in reduced irrigation, reduced pesticide need and/or other environmentally advantageous management practices.

Turfgrass is most efficient when it grows on soil sufficiently enriched with organic material. All turf areas on the golf courses shall have not less than 8 inches of friable soil containing organic material.

Any off-site sources for fill dirt transported to the Golf Courses shall be sampled for pollutants prior to delivery of the fill dirt to the Golf Courses.

Sodding is more desirable than plugging for turf establishment because it reduces the water required to establish the grass and it reduces the threat of erosion during establishment of grass coverage. Where appropriate because of steep slopes or other water quality risk factors, solid sodding or other erosion control techniques are required to prevent erosion.

4.36.2 Non-Play Areas

Non-play areas that surround the fairway and roughs will be left as native Hill Country habitat. Native wildflowers may be added for additional beauty. With appropriate turf selection and management, non-play areas of the golf course may perform their function without irrigation. The Golf Courses shall not irrigate non-play areas in critical drought management periods.

Measures that shall be utilized to preserve the non-play areas include:

 The non-play preserved areas shall be protected during all phases of construction to protect root-zones and prevent compaction of soil.

- There will be a few understory plants that will be undesirable in the non-play areas. These shall be cleared only with hand tools or otherwise to prevent compaction of soils.
- Written procedures for management of non-play native areas shall be established.

4.36.3 Irrigation Plan

An Irrigation Plan shall be included within the WPAP. The Irrigation Plan shall identify BMPs for irrigation operations within each WQ Management Zone. Control and management of irrigation timing, rate, and frequency is a critical component for controlling both runoff and leaching of water from turfgrass and shall be addressed in the Irrigation Plan. If the application of irrigated water does not exceed soil infiltration and storage capacity, runoff and leaching do not occur.

4.36.4 Irrigation Schedules.

The Irrigation Plan shall utilize programmable irrigation control systems to meet the needs of the plant materials in order to prevent overwatering. Modern irrigation technologies shall be utilized to provide highly efficient water usage. The Irrigation Plan shall require use of an on-site weather station to compute the ET loss from the turfgrass daily. Irrigation head placement shall be designed to provide complete coverage of the golf course turf areas. Replacement irrigation will be based on ET as determined by the on-site weather station and shall utilize best management practices to conserve water. Actual irrigation rates must be recorded and a report summarizing irrigation practices shall be made available to SAWS annually upon request.

The Irrigation Plan shall establish irrigation schedules and volume based on need. Irrigation schedules shall minimize evaporation and reduce the potential for disease. Irrigation scheduling and control of irrigation volume effectively conserves water resources and protects water quality. Use of calendar irrigation methods are prohibited. Manipulation of irrigation volume, timing, and rate of application are the principal components of irrigation scheduling. Irrigation scheduling shall also be utilized to avoid runoff and leaching caused by over-watering.

Controllers shall be used to control irrigation systems. Controllers are electrical timing devices used to open or close valves that regulate flow of water to sprinkler heads. Optimal conservation of irrigation water is achieved by connecting effective moisture sensing devices to irrigation system controllers.

4.36.5 Irrigation Zoning

The Golf Course irrigation systems shall be designed so as to allow individual sprinkler zones to operate independently. The irrigation systems shall be designed to operate based on ET in accordance with the following criteria:

- The Golf Courses shall utilize an onsite weather station to measure ET.
- The weather station shall interface with the irrigation system to operate the zones based on water need determined by the ET rate.
- Best Management Practices shall be employed to conserve water and prevent over-watering in connection with all irrigation operations.

4.36.6 Water Conservation

The Irrigation Plan shall provide for the efficient management and conservation of water supplies to prevent unnecessary depletion of local water resources. As noted above, the plan shall include specific irrigation schedules based on replacing ET loss.

Water conservation shall also be achieved by minimizing the amount of acreage to be irrigated for golf course purposes. Specifically, not more than an average of 90 acres of each Golf Course envelope shall be irrigated.

Irrigation of the Golf Courses shall be subject to all conservation provisions set forth in the City of San Antonio City Code, Sections 34-271 through 34-350, as amended from time to time, but as applied in accordance with the Water Provision Agreement, by and between SAWS and the Developer, as such application is authorized by the Services Agreement.

The Irrigation Plan shall also establish an overall water conservation strategy. Water conservation plans target conservation of water on a continuous basis using the following general strategies:

- Establish lower boundary for deficit irrigation strategy (e.g. reduce percentage of ET replacement). The Irrigation Plan shall be provide for field trials conducted by WQ Management Zone or by soil mapping unit to establish lower limits of deficit irrigation.
- Establish priority turfgrass areas requiring irrigation. Greens and tees have the highest priority followed by fairways, roughs, ornamental plantings, and unmanaged/natural areas. Irrigation priorities should be established prior to emergency conditions.
- Reduce total area irrigated and total volume applied to irrigated areas during water shortage conditions.

4.36.7 Audubon International

The Golf Courses shall comply with the design, construction, maintenance and facility operation principles, precepts and guidelines adopted by Audubon International.

4.36.8 Maintenance

Maintenance is critical to efficiently and effectively utilize irrigation water. The Irrigation Plan shall provide for regular inspection of irrigation systems to identify leaks and to monitor water usage. The Irrigation Plan shall specify the frequency of regular mechanical performance evaluations to detect problems such as worn nozzles, leaking valves/heads, valve operation, satellite controller security and pump station operation.

Golf Course staff will be trained to identify leaks and malfunctioning irrigation heads. A formal system shall be established to report conditions and initiate repair work immediately. All irrigation heads shall be inspected not less than weekly. The inspection will be documented in a report completed and retained on site and made available for review by SAWS upon request.

An annual audit of the irrigation system shall be conducted by a licensed irrigator. The audit will include an efficiency determination and identify new technologies and solutions (if they exist) to maintain the Golf Course irrigation system(s) at a minimum of 85 percent efficiency.

4.37 Wellhead Protection

An established and effective Wellhead and Source Water Protection Program is an essential element in the protection of groundwater resources. The amendments to the federal Safe Drinking Water Act of 1986 provide for groundwater protection through the Wellhead and Source Water Protection Program, prevention approaches, and a source water protection assessment program.

At the time of submission of the WPAP, a detailed Wellhead and Source Water Protection Plan ("Wellhead Protection Plan") shall be submitted to SAWS for review and approval. The Wellhead Protection Plan must include BMPs that meet or exceed all set-back distances required by all applicable regulatory authorities for potential sources of contamination. Potential sources of contamination are identified in Table 2. An emergency contingency procedure shall be included in the Wellhead Protection Plan to address the response, containment and remediation of any hazardous materials spilled.

The Wellhead Protection Plan shall also identify and protect the general geology and occurrence of groundwater in the area, land use, and shall include an inventory of historical and present potential sources of contamination within one-quarter mile of each well.

Any abandoned wells not utilized by SAWS for water quality monitoring purposes located at the Golf Courses must be identified in the Wellhead Protection Plan and shall be plugged in accordance Chapter 34, Article VI, Section 36-576 of the City's Utility Development Code and 30 Texas Administrative Code Chapter 338.

4.37.1 Methodology

The Wellhead Protection Plan shall include the following minimum elements:

- Delineation and location of each well located at each of the Golf Courses.
- Inventory of potential sources of contamination within the delineated areas.

4.37.2 Delineation

The delineation of Wellhead Protection Areas ("WHPAs") is an important means for safeguarding water supplies. As defined in the 1986 Safe Drinking Water Act amendments, a WHPA is the surface and subsurface area surrounding a water well or well-field through which contaminants are reasonably likely to move toward and reach such water well or well-field. The Wellhead Protection Plan shall include an initial delineation of one-quarter mile around each well. Conditions of both surface and groundwater flow patterns must be noted in the delineation of each well site.

4.37.3 Inventory

The Wellhead Protection Plan shall locate all well locations and shall inventory all potential sources of contamination within one-quarter mile of the Golf Courses using a Global Positioning Satellite system. The GPS information shall be made available to SAWS in a format for downloading into a SAWS Geographic Information System ("GIS") where it can be used for mapping and/or for reference and analysis. The Wellhead Protection Plan shall be updated promptly to identify any new well locations and/or possible sources of contamination.

Table 2

POTENTIAL SOURCES OF GROUND WATER QUALITY DEGRADATION

Potential Ground Water Quality Pollution Sources that Originate on the Land Surface

- Aboveground storage tanks
- Accidental spills
- Animal feedlots
- De-icing salt usage and storage
- Dumps
- Fertilizers and pesticides
- Grain storage bins
- Industrial activities
- Infiltration of polluted surface water
- Land disposal of either solid or liquid wastes
- Particulate matter from airborne sources
- Stockpiles
- Surface runoff

Potential Ground Water Quality Pollution Sources that Originate in the Ground Above the Water Table

- Artificial recharge
- Graveyards
- Holding ponds and lagoons
- Leakage from underground storage pipelines
- Leakage from underground storage tanks
- Sanitary landfills
- Septic tanks, cesspools, and privies
- Sumps and dry wells
- Waste disposal in excavations

Potential Ground Water Quality Pollution Sources that Originate Below the Water Table

- Abandoned wells
- Drainage wells and canals
- Exploratory wells
- Improperly constructed or deteriorated water wells
- Mines
- Secondary recovery
- Underground storage tanks
- Waste disposal in well excavations
- Well disposal of wastes

5.0 WATER QUALITY MONITORING PLAN

The Golf Courses shall be subject to comprehensive water quality monitoring in accordance with the framework set forth in this PLAN. As more fully set forth below, the Water Quality Monitoring Plan shall include surface water, leachate, and groundwater sampling and monitoring components. The Developer and its successors and assigns shall be responsible for performing the Golf Course runoff, Golf Course surface water, and leachate sampling components of the Water Quality Monitoring Plan, while SAWS shall be authorized to perform monitoring of surface water in adjacent creeks and groundwater. Notwithstanding Developer's responsibility for performing sampling for Golf Course runoff, surface water, and leachate in accordance with this PLAN, SAWS shall be authorized to enter the Property at any time without prior notice to perform sampling of surface water, leachate and/or groundwater within the Property. At the time of entry to the Golf Courses, SAWS shall endeavor to minimize any disruption or interference with Golf Course play and shall provide notice to any representative of the Golf Courses that may be present, but such person's consent shall not be required for SAWS to enter the Golf Courses.

The stormwater, surface water, and leachate sampling components of the Water Quality Monitoring Plan shall be included in the WPAP(s) for the Golf Courses. These components shall provide for comprehensive sampling of Golf Course runoff and leachate to ensure that construction activities and Golf Course operations are detected prior to any adverse impact on the Edwards Aquifer, the Trinity Aquifer and other water resources.

The stormwater, surface water, and leachate sampling components of the Water Quality Monitoring Plan shall provide for the comprehensive sampling of runoff and leachate within the Golf Courses. This component shall be achieved through comprehensive sampling at Golf Course surface water sampling locations, lysimeters, irrigation lakes, catch basins and other onsite testing in order to monitor the quality of water within the Golf Courses. The sampling locations shall be approved by SAWS based on proximity to Sensitive Features and other water quality risk factors. The minimum sampling parameters for the Golf Courses are established in Sections 5.3 and 5.4.

The minimum parameters to be sampled in the stormwater sampling and leachate sampling components of the Water Quality Monitoring Plan are identified in the tables set forth in this Article V. With respect to fertilizers and pesticides, however, the parameters to be monitored shall be based on the specific compounds applied to the Golf Courses. In identifying such compounds, the owner or owners of each Golf Course shall identify the manufacturers' Material Safety Data Sheets ("MSDS") for the pesticides, herbicides, fungicides, algaecides and other materials to be applied to the Golf Courses and shall develop a list of proposed analytes, subject to SAWS' approval, from these MSDS sheets. This method will provide for the sampling of

indicator metals and other materials that may be present in the pesticides, herbicides, fungicides, algaecides and other materials applied to the Golf Courses. A copy of all such MSDS sheets shall be furnished to SAWS upon request. SAWS shall approve the proposed list of analytes to be sampled, and may change the analytes from time to time, based on the leachate potential and other water quality risk factors presented by the compounds proposed for application to the Golf Courses.

The Water Quality Monitoring Plan set forth herein includes specific "Trigger Levels" for Corrective Action. Trigger Levels will be based upon specified percentages of the following regulatory standards as follows:

- Golf Course Trigger Levels: Except as otherwise provided in Section 6.1 or as may be approved by SAWS in the context of a closed loop irrigation system, Trigger Levels for surface water and leachate within the Golf Courses (including runoff) shall be fifty percent (50%) of the maximum contaminant level ("MCL") under the Safe Drinking Water Act, if any. In the event that the Safe Drinking Water Act does not specify an MCL for a compound, then the Trigger Level shall be equal to fifty percent (50%) of the Texas Risk Reduction Program ("TRRP") tier 1 residential PCL. In the event that a compound is not addressed by the Safe Drinking Water Act or the TRRP, then the Trigger Level shall be equal to 50% of the Texas Surface Water Quality Standards ("TSWQS"). The applicable MCL, TRRP or TSWQS standards are hereinafter referred to collectively as the "Regulatory Standards." As noted in Section 4.3 and Section 6.1, the Developer may request modifications of Trigger Levels that would otherwise be applicable to Golf Course surface water runoff in the event that a closed loop irrigation system is utilized.
- Non-Golf Course Trigger Levels: Trigger Levels for surface water within adjacent creeks shall be thirty percent (30%) of Regulatory Standards.
- Groundwater Trigger Levels: For groundwater, Trigger Levels shall be twenty percent (20%) of Regulatory Standards.

5.1 Responsibility for Monitoring

Except as otherwise set forth in this PLAN, the Developer shall be responsible for acquisition and proper construction and installation of all water quality sampling devices and equipment required under the stormwater sampling and leachate sampling components of the Water Quality Monitoring Plan at its sole cost and expense. The Developer and its successors shall provide as much prior notice to SAWS as practicable of each sampling event, so that an authorized representative of SAWS may be present to observe such sampling event and take "split

samples," at SAWS' discretion. SAWS shall be responsible for all costs and expenses that it incurs in connection with such observation and/or sampling.

The Developer shall be responsible for performing the stormwater sampling, Golf Course surface water sampling, and leachate sampling components of the Water Quality Monitoring Plan at its sole cost and expense. Responsibility for sampling may be assigned by the Developer to successive owners, lessees and operators of any one or more of the Golf Courses, provided prior notice and a copy thereof are furnished to SAWS and the City, and provided further that SAWS and the City approve such assignment. SAWS and the City hereby consent to the assignment of responsibility for the water quality monitoring components of this PLAN to PGA in accordance with the terms and conditions of the Services Agreement. Notwithstanding any provision in this PLAN or the Services Agreement to the contrary, all sales, leases or operating agreements the subject of which is any one or more of the Golf Courses shall expressly provide that the purchaser, lessee or operator (as applicable) covenants and agrees to comply with the stormwater sampling, Golf Course surface water sampling, and leachate sampling components of the Water Quality Monitoring Plan.

In addition to the scheduled stormwater, surface water, and leachate sampling components of the Water Quality Monitoring Plan to be performed by the Developer and/or subsequent owners, lessees or operators, SAWS shall have the right to enter the Property at any time without prior notice to perform water quality sampling and monitoring at any location determined in the sole discretion of SAWS, including surface water in creeks and groundwater wells located on the Property. SAWS shall minimize any disruption of Golf Course play caused by any such entry. A representative of the Golf Courses may be present to observe such events. SAWS shall be responsible for all costs and expenses that it incurs in connection with its sampling and monitoring activities. The Developer and/or other authorized representative(s) of the Golf Courses shall be authorized to take "split samples" at the same time as SAWS performs such sampling and monitoring, provided all costs and expenses incurred by such persons shall be their sole responsibility and SAWS shall have no responsibility therefor.

SAWS shall be authorized to construct, at its sole cost and expense, groundwater monitoring wells and surface water sampling and monitoring stations within the Property; provided such wells and sampling devices shall be located in areas that do not unreasonably interfere with play on the Golf Courses and do not unreasonably interfere with Developer's construction of improvements within the Property. SAWS and the Developer shall coordinate in good faith concerning the proposed location(s) of any such sampling and monitoring devices and wells.

The Developer agrees on behalf of itself and its successors and assigns that it shall not plug any groundwater well(s) on the Property (whether in existence or constructed hereafter), or take any other actions which may prevent SAWS from utilizing such wells for groundwater monitoring purposes, without SAWS' prior written consent.

The person(s) or entities responsible for water quality sampling and monitoring hereunder shall be responsible for maintaining all water quality sampling and monitoring devices and locations in proper operating condition at all times.

5.2 Annual Payment by Developer For Water Quality Monitoring

The Developer agrees to pay to SAWS a sum equal to \$100,000 per year during the term of the Services Agreement. The initial payment shall be made within thirty (30) days of the effective date of the Services Agreement, and shall thereafter be paid on or before December 31 of each year that the Services Agreement remains in effect. Upon expiration of the Services Agreement, Developer's and any successive Golf Course owner's obligation to pay the annual \$100,000 payment to SAWS shall terminate simultaneously therewith. The purpose of the foregoing financial contribution is to contribute to certain costs that may be incurred by SAWS under this PLAN, including administrative, review, monitoring, and investigation costs.

As set forth in the Services Agreement, the Developer and each successive owner of the Golf Courses, or any portion thereof, shall be jointly and severally liable for annual payment of the \$100,000 sum.

5.3 Sampling Protocol

Sample collection methods, documentation, handling and analysis will be conducted in accordance with standard scientific methods recognized by EPA. The Water Quality Monitoring Program may include a combination of automatic sampling devices and hand collected samples.

All samples shall be analyzed by State-approved laboratories. The Developer shall submit samples only to laboratories that utilize detection limits that are lower than the applicable Regulatory Standard for each analyte. Quality assurance/quality control samples shall be submitted to the laboratory with each sample. The testing laboratories' quality assurance/quality control data, together with the analytical reports, shall be furnished to SAWS upon request.

For purposes of the Water Quality Monitoring Plan, a rain event shall be defined as an event that is greater than 0.1 inches in magnitude, that generates sufficient runoff to collect valid samples, and that occurs at least 72 hours from the previously measurable (greater than 0.1 inches) rain event.

5.4 Golf Course Surface Water Sampling

The surface water sampling component of the Water Quality Monitoring Plan shall provide for sampling of surface water runoff on not less than two holes on <u>each</u> Golf Course and in all irrigation lakes. The Golf Courses shall be designed and constructed to allow for such water quality sampling. The holes to be sampled shall be approved by SAWS and shall be selected based on location to creek, location to Sensitive Features, and other water quality risk factors.

The two holes will each be set up to take not less than four samples, as well as leachate sampling as described below. The first surface water sampling location will be from the fairway at a location to be approved by SAWS. As a best management practice, the fairway must be designed to retain stormwater in an area longer and allow infiltration and uptake by the turf rather than allowing stormwater to quickly run offsite. Stormwater runoff must be directed to a discharge point. The discharge point will be designed to allow representative sampling of water quality.

The second surface water sampling point will be from the green area. The sampling location, to be approved by SAWS, shall allow for comprehensive sampling of the quality of any stormwater runoff from the green area.

Sampling will be performed on each Golf Course hole (consisting of not less than four locations on each of two holes per golf course) and each of the three additional lysimeter locations (as selected by SAWS pursuant to Section 5.5) not less than four times per year, on a quarterly basis. A grab sample will be taken from the first flush during the first 30 minutes of the runoff event from each sampling point. Sampling stations shall also be constructed and located on the Golf Courses so as to allow composite samples taken approximately 20 minutes apart during an entire storm event or for the first three hours, whichever is shorter.

Sampling must also be performed during the first rain event that generates sufficient runoff after each blanket application of pesticides or fertilizers. Such sampling may qualify as one of the required quarterly sampling events, provided it meets all applicable requirements of the approved Water Quality Monitoring Plan.

In addition to Golf Course surface water runoff sampling, all irrigation lakes on each Golf Course shall be sampled bi-monthly (i.e., every other month) for the first two years, and four times per year thereafter. The Water Quality Monitoring Plan shall also require that all irrigation lakes, ponds and water features constructed on the Golf Courses be monitored on a regular basis for leakage. Any leakage or leaching into sub-surface water resources shall be immediately reported to the SAWS Resource Protection and Compliance Department Director. Immediate action shall be taken by the Developer to stop the leakage, and depending upon surrounding circumstances, including the quality of irrigation water within the irrigation lake(s) and the potential quantity of irrigation water that may have leaked, SAWS may require Corrective Action in accordance with Section 6.4 of this PLAN.

The following tables summarize the minimum requirements to be included in the Water Quality Monitoring Plan for parameters to be sampled, sampling frequency, and Corrective Action Trigger Levels for Golf Course surface water runoff and irrigation lake sampling:

Table 3 GOLF COURSE SURFACE WATER SAMPLING REQUIREMENTS

				Sample Frequency			
	Regulatory Standard(A)	Units	Trigger Level(B)	First and Second Years	Third, Fourth, and Fifth Years	Sixth Year and Forward(I)	
General Quality Parameters	1						
Temperature	NA	°F	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
PH	6.5-8.5(D)	S.U.	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Conductivity, Specific	NA	μS/cm	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Total Suspended Solids	NA	mg/l	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Nutrients							
Nitrate-N	10	mg/l	5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Nitrite-N	1	mg/l	0.5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Nitrate-nitrite-N	10(E)	mg/l	5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Ammonia-N	30(F)	mg/l	15	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Sulfate	200(G)	mg/l	100	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Phosphorus (J)							
Pesticides/Herbicides/Fungi	cides/Algaecides						
Pesticides	С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Herbicides	С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Fungicide	С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Algaecides	С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD	
Key Code							

- A. MCLs, TCEQ Tier 1 Residential Groundwater Ingestion PCLs, or TSWQS.
- B. Trigger Levels are 50% of Regulatory Standards
- C. Chemical Specific Per Compound Applied
- D. EPA Secondary Drinking Water Standard
- E. EPA MCL
- F. EPA Lifetime Health Advisory
- G. TSWQS
- H. Blanket application of pesticides or fertilizers refers to applications that are made over large portions of a Golf Course, as opposed to spot applications.
- I. To Be Determined by SAWS Historical record will be assessed and a determination will be made for future sampling analysis requirements; provided, however, that sampling requirements shall not be more frequent than applicable in years three through five without Developer's consent.
- J. Trigger levels to be established by SAWS based on historical sampling data

Table 4 IRRIGATION LAKE SAMPLING REQUIREMENTS

		IRRIGATIO	ON LAKE SAM	PLING			
				Sample Frequency			
	Regulatory Standard(A)	Units	Trigger Level(B)	First Year(J)	Second through Fifth Years	Sixth Year and Forward(H)	
General Quality Parameters							
Temperature	NA	°F	NA	Bi-Monthly	4 Times/Year	TBD	
PH	6.5-8.5(D)	S.U.	NA	Bi-Monthly	4 Times/Year	TBD	
Conductivity, Specific	NA	μS/cm	NA	Bi-Monthly	4 Times/Year	TBD	
Total Suspended Solids	NA	mg/l	NA	Bi-Monthly	4 Times/Year	TBD	
Nutrients							
Nitrate-N	10	mg/l	5	Bi-Monthly	4 Times/Year	TBD	
Nitrite-N	1	mg/l	0.5	Bi-Monthly	4 Times/Year	TBD	
Nitrate-nitrite-N	10(E)	mg/l	5	Bi-Monthly	4 Times/Year	TBD	
Ammonia-N	30(F)	mg/l	15	Bi-Monthly	4 Times/Year	TBD	
Sulfate	200(G)	mg/l	100	Bi-Monthly	4 Times/Year	TBD	
Phosphorus (I)							
Pesticides/Herbicides/Fungicides	/Algaecides						
Pesticides	С	mg/l	В	Bi-Monthly	4 Times/Year	TBD	
Herbicides	C	mg/l	В	Bi-Monthly	4 Times/Year	TBD	
Fungicide	С	mg/l	В	Bi-Monthly	4 Times/Year	TBD	
Algaecides	С	mg/l	В	Bi-Monthly	4 Times/Year	TBD	
Key Code							

- A. MCLs, TCEQ Tier 1 Residential Groundwater Ingestion PCLs, or TSWQS,.
- B. Trigger Levels are 50% of Regulatory Standards
- C. Chemical Specific Per Compound Applied
- D. EPA Secondary Drinking Water Standard
- E. EPA MCL
- F. EPA Lifetime Health Advisory
- G. TCEQ Secondary MCL
- H. To Be Determined by SAWS Historical record will be assessed and a determination will be made for future sampling analysis requirements; provided, however, that sampling requirements shall not be more frequent than applicable in years three through five without Developer's consent.
- I. Trigger Levels to be established by SAWS based on historical sampling data
- J. "Bi-monthly" sampling shall be performed once every two months.

5.5 Golf Course Leachate Sampling

The Design Plan and Water Quality Monitoring Plan shall provide for the installation and monitoring of lysimeters on each Golf Course at locations to be approved by SAWS in the Design Plan for purposes of providing comprehensive sampling and analysis of leachate water quality below the Golf Courses. The lysimeters shall be installed at those locations that present the greatest potential for subsurface leaching, as identified by a Water Quality Management Zone or as otherwise approved by SAWS. The Developer shall be required to install at its sole cost and expense up to twenty (20) lysimeters on each Golf Course. The final number of lysimeters to be constructed on each Golf Course shall be determined by SAWS at the time of review and approval of the Design Plan and the Water Quality Monitoring Plan based on the topography of each Golf Course, proximity to Recharge Features, and other water quality risk factors. In the event that SAWS determines that more than twenty lysimeters are required on any one or more of the Golf Courses, then SAWS and the Developer shall each pay one-half (1/2) of the cost of installation of each such additional lysimeter. Upon completion of construction of each Golf Course, SAWS shall not require or perform the installation of additional lysimeters unless previous water quality sampling data indicates a potential impact of Golf Course operations on water quality and determines such additional sampling is necessary for source identification, remediation, or other water quality purposes.

The Design Plan and Water Quality Monitoring Plan shall identify the proposed depth of all lysimeters, which shall be representative of soil depths in each Water Quality Management Zone.

Not less than two of the four required sampling locations for each of the two Golf Course holes (per Golf Course) designed for comprehensive sampling shall consist of lysimeter sampling locations approved by SAWS. The first lysimeter sampling location shall be located at the tee box. An underdrain system must be designed and constructed to collect water from the tee box area and carry the water to a discharge point. Sampling shall be performed with a lysimeter to be placed at a depth and location to be approved by SAWS in the vegetated catchment area adjacent to the tee that captures water from the underdrain system installed below the tee.

The second lysimeter sampling point shall be located adjacent to the green area. Specifically, such lysimeter must be placed at a depth and location to be approved by SAWS in the vegetated catchment area adjacent to the green that captures water from the underdrain system installed below such green.

SAWS shall select not more than three lysimeters per Golf Course (in addition to the two lysimeters to be sampled on each of the two Golf Course holes set up for comprehensive sampling pursuant to Section 5.4) to be sampled by Developer during each sampling event. Leachate sampling shall be performed not less than four times per year for the first five years after Golf Course construction and after blanket application of pesticides or fertilizers.

Thereafter, SAWS may change the frequency of sampling based on historical sampling data. Testing after blanket application of pesticides or fertilizers can count as two of the four required tests. The same sampling protocol as described above with respect to surface water runoff sampling shall apply to leachate sampling.

The following table summarizes the minimum requirements to be included in the Water Quality Monitoring Plan for parameters to be sampled, sampling frequency, and Corrective Action Trigger Levels for Golf Course leachate monitoring:

Table 5 LYSIMETER SAMPLING REQUIREMENTS

Regulatory Standard(A)	Units	Trigger		le Frequency	
	Units			ie rrequency	
	Units				
		Level(B)	First and Second Years	Third, Fourth, and Fifth Years	Sixth Year and Forward(I)
NA .	°F	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
6.5-8.5(D)	S.U.	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
NA	μS/cm	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
NA	mg/l	NA	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
10	mg/l	5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
1	mg/l	0.5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
10(E)	mg/l	5	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
30(F)	mg/l	15	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
300(G)	mg/l	150	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
				TY STEEL	
Algaecides					
С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
С	mg/l	В	4 Events/Year Including Twice After Blanket Applications(H)	4 Times/Year	TBD
	10 1 10(E) 30(F) 300(G) Algaecides C C C	10 mg/l 1 mg/l 10(E) mg/l 30(F) mg/l 300(G) mg/l C mg/l C mg/l C mg/l C mg/l	10 mg/l 5 1 mg/l 0.5 10(E) mg/l 5 30(F) mg/l 15 300(G) mg/l 150 Algaecides C mg/l B C mg/l B C mg/l B C mg/l B	NA mg/l NA 4 Events/Year Including Twice After Blanket Applications(H) 10 mg/l 5 4 Events/Year Including Twice After Blanket Applications(H) 1 mg/l 0.5 4 Events/Year Including Twice After Blanket Applications(H) 10(E) mg/l 5 4 Events/Year Including Twice After Blanket Applications(H) 30(F) mg/l 15 4 Events/Year Including Twice After Blanket Applications(H) 300(G) mg/l 150 4 Events/Year Including Twice After Blanket Applications(H) Algaecides C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H)	NA mg/l NA 4 Events/Year Including Twice After Blanket Applications(H) 10 mg/l 5 4 Events/Year Including Twice After Blanket Applications(H) 1 mg/l 0.5 4 Events/Year Including Twice After Blanket Applications(H) 10(E) mg/l 5 4 Events/Year Including Twice After Blanket Applications(H) 30(F) mg/l 15 4 Events/Year Including Twice After Blanket Applications(H) 300(G) mg/l 150 4 Events/Year Including Twice After Blanket Applications(H) 4 Times/Year After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H) C mg/l B 4 Events/Year Including Twice After Blanket Applications(H)

A. TCEQ Tier 1 Residential Groundwater Ingestion PCLs, unless otherwise noted.

B. Trigger Levels are 50% of Regulatory Standards

C. Chemical Specific Per Compound Applied

D. EPA Secondary Drinking Water Standard

E. EPA MCL

F. EPA Lifetime Health Advisory

G. TCEQ Secondary MCL

H. The term Blanket application of pesticides or fertilizers which are made only once or twice a year over large portions of the Golf Course, as opposed to spot applications. Post-blanket application sampling may qualify as a quarterly sampling event.

I. To Be Determined by SAWS – Historical record will be assessed and a determination will be made for future sampling analysis requirements; provided, however, that sampling requirements shall not be more frequent than applicable in years three through five without Developer's consent.

J. Trigger levels to be established by SAWS based on historical sampling data

5.6 Non-Golf Course Surface Water Monitoring

SAWS shall be authorized to enter the Property at all times to perform sampling of surface water of creeks and runoff to evaluate the quality of surface water prior to Golf Course areas and the quality of water exiting the Golf Courses, including water exiting catchment basins, in locations so as to minimize any disruption to Golf Course play. In connection therewith, SAWS shall be authorized to install monitoring stations and related improvements. SAWS shall be responsible for all costs associated with monitoring surface water in non-Golf Course areas. An authorized representative of the Developer or its successors may be present and take "split samples" at the same time as SAWS performs its sampling and monitoring, provided SAWS shall have no responsibility for any costs or expenses incurred by the Developer or its successors in connection with such sampling.

The Developer consents to the installation by SAWS of a surface water quality monitoring station "upstream" of the Golf Courses at a location to be selected by SAWS, for purposes of analyzing the quality of surface water prior to entering the Golf Courses. SAWS shall select a site that does not materially interfere with construction activities by Developer. SAWS shall pay all costs and expenses associated with the installation of the monitoring station utilizing Developer's annual financial contribution (as set forth in Section 5.2 of this PLAN) or other available funds.

5.7 Groundwater Monitoring

SAWS shall be authorized to enter the Property at all times to perform groundwater monitoring utilizing all groundwater wells that may exist or be constructed from time to time on the Property. In addition, SAWS shall be authorized to construct additional groundwater monitoring wells on the Property; provided, however, such wells must be constructed at locations that do not materially interfere with play on the Golf Course or construction of improvements by Developer and its successors. SAWS shall be responsible for payment of all costs and expenses incurred by SAWS in connection with groundwater monitoring, and the Developer shall have no responsibility therefore.

The Developer agrees on behalf of itself and its successors and assigns that it shall not plug any groundwater well(s) on the Property (whether in existence or constructed hereafter), or take any other actions which may prevent SAWS from utilizing such wells for groundwater monitoring purposes, without SAWS' prior written consent.

6.0 CORRECTIVE ACTION

This PLAN is intended to ensure that there is no degradation of surface water or groundwater quality as a result of the construction and operation of the Golf Courses within the Property. To achieve this result, substance-specific numerical standards for contaminants shall serve as "Trigger Levels" for purposes of triggering the need for Corrective Action. The applicable

Trigger Levels shall be based on a specified percentage of the applicable Regulatory Standards for the pollutants as follows:

6.1 Golf Course Trigger Levels

The level of pollutants in surface water and leachate sampled within the Golf Courses shall not exceed fifty percent (50%) of Regulatory Standards. The Golf Course Trigger Levels shall not be applicable to surface water runoff that is undergoing proper treatment within catchment basins. Further, in the event that a closed loop irrigation system is utilized, the Developer may request modification of Golf Course Trigger Levels applicable to other surface water runoff within the Golf Courses prior to treatment by catchment basins or other water quality features. Any such modifications will require SAWS' prior written approval. Further, in the event that SAWS grants its written approval to such request, SAWS shall retain the right to subsequently withdraw any such approval based upon subsequent sampling results or other water quality concerns.

6.2 Non-Golf Course Trigger Levels

The level of pollutants in surface water monitored by SAWS in and entering adjacent creeks shall not exceed thirty percent (30%) of Regulatory Standards.

6.3 Groundwater Trigger Levels

The level of pollutants in surface water monitored by SAWS in groundwater shall not exceed twenty percent (20%) of Regulatory Standards.

6.4 Corrective Action Plan

In the event that any water quality sampling or monitoring by Developer or SAWS indicates the presence of any Golf Course related constituent above Trigger Levels, then immediate Corrective Action shall be taken by Developer and continued until the constituent(s) stabilize to approved cleanup levels, in accordance with the phased procedures hereinafter set forth.

6.4.1 Notice.

In the event that any water quality sampling performed by Developer indicates the presence of any analyte above applicable Trigger Levels, then the Developer shall provide immediate written notice thereof to SAWS, along with a copy of the analytical results. In the event that any water quality sampling performed by SAWS indicates the presence of any analyte above applicable Trigger Levels, then SAWS shall provide immediate written notice to the Developer, along with a copy of the laboratory analyses reports.

6.4.2 10 Day Period for Establishing No Responsibility

Upon receipt of sampling results that indicate the presence of any analyte above applicable Trigger Levels (or the receipt of written notice thereof from SAWS based on SAWS' sampling), the Developer shall have a ten (10) day period to produce clear and convincing objective evidence that the elevated constituents identified by the sampling are unrelated to the Golf Course operations as reasonably determined by SAWS.

6.4.3 Phase I Corrective Action Plan

In the event that the Developer fails to timely establish by clear and convincing objective evidence that the elevated constituents identified by sampling are unrelated to Golf Course operations as reasonably determined by SAWS in accordance with Section 6.4.2, then SAWS shall notify the Developer in writing. Thereafter, the Developer shall have ten (10) days to prepare and submit to SAWS "Phase I" of a Corrective Action Plan for review and approval. Any applicable phase of the Corrective Action Plan shall also be submitted to TCEQ to the extent that the agency has jurisdiction. The Phase I Corrective Action Plan submitted to SAWS shall include the following minimum components, except as otherwise determined not applicable by SAWS:

Phase I Corrective Action Plan Requirements:

- Subsequent sampling to confirm presence of elevated constituent(s);
- Identification of potential source;
- · Continued monitoring of the constituent of concern;
- A procedure specifying subsequent samplings and analysis which shall be tailored for the purpose of specifically identifying the Golf Course operation practices and procedures which have the potential to have contributed to the resulting elevated constituents;
- A proposed timeframe by which Phase 1 sampling shall terminate and Phase II of the Corrective Action Plan shall commence; and
- Any components required by SAWS in its written notice to Developer, including by way of example and not in limitation, any Golf Course related management practice modifications.

The Phase I Corrective Action Plan requirements, including any modifications thereto required by SAWS in connection with its approval, shall be implemented immediately upon receipt of SAWS' approval.

In the event that Phase I sampling does not confirm the existence of an analyte above Trigger Levels or demonstrates by clear and convincing objective evidence that the constituent is not Golf Course-related, then the Developer shall provide such sampling results to SAWS for review and approval. Upon receipt of written approval from SAWS, Phase I of the Corrective Action Plan shall terminate and the Developer shall be released from further responsibility for compliance therewith.

6.4.4 Phase II Corrective Action Plan

Upon the completion or expiration of Phase I of the Corrective Action Plan, the Developer shall immediately submit to SAWS a Phase II Corrective Action Plan for review and approval. The Phase II portion of the Corrective Action Plan shall be based on the investigative findings produced in the Phase I portion of the Corrective Action Plan, and shall be designed to eliminate the potential source(s) of the elevated constituent identified and confirmed by subsequent sampling in Phase I. The Phase II Corrective Action Plan shall include the following minimum components, except as otherwise determined not applicable by SAWS:

Phase II Corrective Action Plan Requirements:

- Continued monitoring of the constituent of concern;
- Modification of fertilizer application, nutrient application, irrigation rates and other management practices to address the constituent of concern;
- Structural remediation shall take place as necessary;
- Proposed schedule for implementation and completion of Phase II Corrective Action; and
- Proposed cleanup level(s), which shall be no less stringent than the applicable Trigger Level or as otherwise approved in writing by SAWS.

The Phase II Corrective Action Plan components, including any modifications thereto required by SAWS in connection with its approval, shall be implemented immediately upon approval of SAWS.

If a complete Phase I or Phase II Corrective Action Plan is not timely submitted to SAWS or any deficiencies in the above-referenced components identified by SAWS are not incorporated into the applicable phase of the Corrective Action Plan, then SAWS shall have the right to impose mandatory changes in management practices, including the suspension of pesticide and fertilizer applications in one or more areas of the Golf Courses, until the source is located and corrected, or exercise any of the other enforcement rights provided for under this PLAN.

6.4.5 Phase III Corrective Action Plan.

If constituent concentrations do not decrease to approved cleanup levels after implementation of the management practice modifications set forth in the approved Phase II Corrective Action Plan, then Developer shall commence Phase III of the Corrective Action Plan immediately upon the expiration of Phase II Corrective Action. The Phase III Corrective Action Plan shall include the following minimum components, as determined and approved by SAWS:

- A comprehensive evaluation of the potential source medium and source location shall be conducted in a manner and according to a schedule approved by SAWS and any other regulatory authority with jurisdiction. Additional sampling shall be performed, or soil leachate to groundwater modeling shall be utilized, as necessary to identify the source of the contamination.
- In the event that the Phase II management practice modifications do not timely lower concentrations to cleanup levels, then SAWS may require as part of Phase III the preparation and implementation of a formal remediation plan to be approved by SAWS. Remediation shall be undertaken in accordance with the methodology set forth in the TCEQ's Texas Risk Reduction Program for residential property, or other methodology reasonably required by SAWS in the event that TCEQ's Texas Risk Reduction Program for residential property does not provide for remediation under the circumstances. Except as otherwise determined by SAWS, the cleanup levels to be achieved in connection with any such remediation plan shall be below the specified percentage of Regulatory Standards that triggered Corrective Action, as identified in Sections 6.1 through 6.3 above. Upon request by Developer that SAWS impose a different cleanup level, SAWS will consider the quality of water supplied by SAWS for irrigation and other factors that may be relevant to the appropriate cleanup level.

6.5 Responsibility for Corrective Action

The Developer shall be responsible for all corrective action hereunder. Responsibility for corrective action may be assigned by Developer to successive owners, lessees and/or operators of any one or more of the Golf Courses provided prior notice and a copy of such assignment is furnished to SAWS, and provided further that the prior approval of the City and SAWS is received for such assignment. The City and SAWS hereby consent to the assignment of responsibility for corrective action under this PLAN by the Developer to PGA in accordance with the terms and conditions of the Services Agreement.

Notwithstanding any provision in this PLAN or the Services Agreement to the contrary, all sales or leases of any one or more of the Golf Courses shall expressly provide that the purchaser or

lessee (as applicable) covenants and agrees to comply with and assume the corrective action obligations set forth herein.

All corrective action shall be at the sole cost and expense of the Developer and successive owners, lessees and operators of the Golf Courses (except to the extent that that an authorized representatives of the City and SAWS have released the Developer from all or a portion of its corrective action obligations).

SAWS acknowledges and agrees that the Developer shall have no responsibility to perform corrective action for contamination unrelated to Golf Course operations. The Developer shall have the burden of demonstrating, through clear and convincing objective evidence, that any elevated constituents identified by sampling performed by SAWS or the Developer is unrelated to Golf Course operations. Such demonstration must be made within the ten (10) day period for submission of a corrective action plan as set forth in Section 6.4.2 as a result of Phase I sampling, or such different period of time as may be approved by SAWS.

ENFORCEMENT

7.0 Enforcement

The Developer acknowledges and agrees that it is contractually obligated to comply with the applicable provisions of this PLAN and all operation plans approved by SAWS pursuant hereto, including the WPAP. Further, these obligations shall run with the land and shall be binding on any subsequent owner, lessee, and operator of the Golf Courses. In addition to any rights at law or in equity that may be available to SAWS or the City of San Antonio, the Developer agrees, as a matter of contract and on behalf of its respective successors and assigns, that any failure to comply with this PLAN or an operation plan approved by SAWS shall entitle the City and/or SAWS to exercise one or more of the enforcement rights described below.

Notwithstanding any provision in this PLAN or the Services Agreement to the contrary, all sales or leases of any one or more of the Golf Courses shall expressly provide that the purchaser or lessee (as applicable) covenants and agrees to comply with, and be subject to, the enforcement provisions set forth herein. Upon assignment to PGA, SAWS and the City shall release the Developer from enforcement action only in accordance with the terms and conditions set forth in the Services Agreement.

7.1 Termination of Services Agreement

At any time prior to an authorized assignment of Developer's rights under this PLAN to PGA, failure by Developer to submit any operation plan required pursuant to this PLAN, commencement of construction of the Golf Courses prior to approval by SAWS, or failure to perform and complete any Corrective Action Plan requirements, including remediation of any environmental contamination caused by Golf Course operations, shall constitute a material breach of the Services Agreement and shall entitle the City to terminate the Services Agreement, or perform any and all other actions authorized under the Services Agreement for breach thereof.

7.2 Termination of Golf Course Operations

Failure by Developer or its successors and assigns to perform and complete any Corrective Action Plan requirements, including remediation of any environmental contamination caused by Golf Course operations, shall constitute a material breach of this PLAN and shall entitle SAWS to terminate operation of the Golf Courses (including, but not limited to, the suspension of application of all chemicals to the Golf Courses and the suspension of all play on the Golf Courses) until such time as SAWS determines that the environmental contamination has been fully remediated in accordance with the requirements of this PLAN.

7.3 Failure to Comply with Management Practices

In the event that the Developer or any subsequent owner, lessee, or operator of the Golf Course(s) fails to comply with any requirement set forth in this PLAN, an approved operation plan, or an approved phase of a Corrective Action Plan, then SAWS shall provide written notice and reasonable evidence of the alleged violation or failure to all potentially-responsible parties. The recipients of such written notice shall have ten (10) business days from the date of the notice to either: (i) demonstrate by clear and convincing evidence that no violation has taken place; or (ii) correct the violation or failure, and furnish written evidence of such corrective action to SAWS within said ten (10) day period.

SAWS acknowledges that the nature of certain violations may not be subject to "cure" within ten (10) days, either because the violation is an isolated event that is not ongoing in nature and cannot be "undone" (e.g., application of pesticides in a buffer zone) or because the nature of violation is such that notwithstanding the Developer's best efforts, the violation may not be corrected within ten days. In the event of the former circumstance, then SAWS shall be entitled to initiate any of the enforcement actions described in this PLAN immediately upon the expiration of the ten (10) day period. In the event of the latter circumstance, then SAWS may, but shall not be required, to specify an alternative deadline for completion of corrective action by Developer.

Failure to correct the alleged violation or to furnish written evidence to SAWS in accordance with this PLAN shall entitle SAWS to impose one or more of the following enforcement actions:

- SAWS shall have the right, as a matter of contract, to institute mandatory changes in Golf
 Course management practices directly related to the alleged violation. By way of example
 and not in limitation, if the violation relates to the application of pesticides, SAWS shall have
 the right to suspend further applications of pesticides in one or more areas of the Golf
 Courses.
- SAWS shall have the right to perform additional monitoring or sampling.
- SAWS shall have the right, as a matter of contract, to receive a payment upon expiration of the notice and cure period described above. Specifically, the Developer agrees on behalf of itself and its successors and assigns that SAWS will be damaged by any failure to comply with the requirements of this PLAN or any operation plan, and further recognizes the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by SAWS in the event of such failure or violation. Accordingly, instead of requiring such proof, the Developer agrees as a matter of contract that it (and any subsequent owners, lessees and operators) shall be responsible for payment to SAWS (for so long as each is a responsible party under the terms of this PLAN) the following sums for failure to comply with the applicable requirements of this PLAN or any operation plan approved by SAWS pursuant

hereto, and each day such failure or violation continues after notification and the cure period shall be considered a separate incident:

Application of pesticides/fertilizers during prohibited weather conditions	\$1,000
Application of pesticides/fertilizers in buffer zones	\$5,000
Application of prohibited pesticide/fertilizer	\$5,000
Unauthorized Damage or Destruction of Known Sensitive Feature	\$10,000
Failure to cease construction activities that impact, or failure to preserve, previously-unknown Sensitive Feature in accordance with TCEQ requirements	\$10,000
Violation of WPAP requirement	\$5,000
Failure to perform required sampling	\$10,000
Violation of other management practices	\$1,000

For isolated events that constitute violations under this PLAN and that are not subject to cure by their nature, the violation shall be construed to have occurred on the date of occurrence of the event in question. By way of example, in the event that Developer applies pesticides in a buffer zone on two consecutive days, two violations shall be deemed to have occurred, and Developer shall be required to pay to SAWS a total sum of \$10,000 under this PLAN for such violations.

The foregoing contractual payments shall be joint and several obligations of the Developer and any subsequent owners, lessees and operators of the Golf Courses, except to the extent the Developer is expressly released therefrom by authorized representatives of the City and SAWS Notwithstanding any provision in this PLAN or the Services Agreement to the contrary, all sales or leases of any one or more of the Golf Courses shall expressly provide that the purchaser or lessee (as applicable) covenants and agrees to make the contractual payments described herein in accordance with the terms of this PLAN.

The contractual payments shall not prevent SAWS or the City from exercising any other enforcement rights that either entity may have under the laws of the State of Texas or that may be set forth in the City's ordinances, as amended from time to time, and shall in no manner be construed to relieve Developer or subsequent owners, lessees and operators from their Corrective Action obligations under this PLAN.

DEFINITIONS

8.0 Definitions

In addition to the terms defined in the text of this PLAN, the following definitions shall apply to defined terms, except when the context provides otherwise:

Abandoned Well: A well that has not been used for six consecutive months. A well is considered to be in use in the following cases: a non-deteriorated well which contains the casing, pump and pump column in good condition; or a non-deteriorated well which has been properly capped.

(AST): Above Ground Storage Tank System, defined as a non-vehicular device (including any associated piping) that is made of non-earthen materials, located on or above the ground surface and containing an accumulation of static hydrocarbons or hazardous substances, but excluding containers of gasoline, oil or household products used for normal household uses less than two gallons in size, and which are not otherwise prohibited under applicable laws and regulations.

(Ac-ft) Acre feet: The quantity of water required to cover one acre of land one foot deep; 325,851 gallons.

(BMP) Best Management Practice: An effective integration of stormwater management systems, with appropriate combinations of landscape conservation, enhancement, structural control, impervious operation, and effectiveness of structural controls, impervious cover, schedules of activities, prohibitions of practices, maintenance procedures and other management practices which provide an optimum way to convey, store and release runoff, so as to reduce peak discharge, remove pollutants, and enhance the environment

(BOD) Biochemical oxygen demand or biological oxygen demand: A measure of the amount of oxygen consumed in the biological processes that break down organic matter in water. The greater the BOD, the greater the degree of pollution.

Buffer Zone: Strip or area of vegetation used for removing sediment, organic matter, and/or other pollutants from runoff and wastewater

(COD) Chemical Oxygen Demand: A measurement of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

Composite Sample: A series of water samples taken over a given time and weighted by flow rate or time.

Corrective Action: Those actions taken to verify the existence of a potential threat of possible degradation of the surface water or groundwater quality as a result of the construction and

operation of the Golf Courses, and, if so verified, to remove, remediate, or minimize such threat, pursuant to the requirements of this PLAN.

Corrective Action Plan: A plan submitted by Developer and approved by SAWS which is prepared in response to the Developer's obligation to perform Corrective Action under this PLAN, and which contains those phases and components described in Section 6.4.

Detection Limit: The lowest concentration of an analyte that can be determined with reasonable confidence.

Detention: The temporary storage of storm runoff, which is used to control the peak discharge rate and which provides gravity settling of pollutants.

Developer: Lumbermen's Investment Corporation

(EARZ) Edwards Aquifer Recharge Zone: Generally, that area where the stratigraphic units constituting the Edwards Aquifer out crop, and including the outcrops of other formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer.

(EPA) Environmental Protection Agency

Erosion: The wearing away of the land surface by running water, waves, or moving ice and wind, or by such processes as mass wasting and corrosion (solution and other chemical processes).

(ET) Evapo-transpiration: Evapotranspiration is loss of moisture through the processes of evaporation from land and water surfaces and through transpiration by plants.

Fertilizer: Any of a large number of natural or synthetic materials, including manure and nitrogen, phosphorus, and potassium compounds, spread on or worked into soil to increase its capacity to support plant growth.

First Flush: At least the first one-half inch of runoff from a storm event that flushes off and contains a disproportionately large loading of the accumulated pollutants from impervious and non-impervious surfaces.

Impervious Cover: Roads, parking areas, buildings, pools, patios, sheds, driveways, private sidewalks, and other impermeable construction covering the natural land surface. "Percent impervious cover" shall be calculated as the area of Impervious Cover within a lot, tract or parcel or within the total site being developed, divided by the total areas within the perimeter of such lot, tract, parcel or development.

Interflow: The lateral movement of water into the unsaturated zone during and immediately after a precipitation event.

(IPM) Integrated Pest Management

Irrigation return flow: Surface and subsurface water, which leaves the field following application of irrigation water.

Grab Sample: A sample taken at the discretion of the sampler, as to the condition or event that it would represent.

(ha) hectare: The land area equal to 10,000 square meters or 2.471 acres.

Herbicide: A chemical substance used to destroy or inhibit the growth of plants, especially weeds.

Hydraulic Gradient: In an aquifer, the rate of change of pressure head per unit distance from one point to another.

Karst: An area of irregular limestone where erosion has produced sinkholes, fissures, underground streams, and caverns.

Lysimeter: An underground water collection device designed to collect leachate water samples from different depths within the soil profile.

Material Safety Data Sheet: OSHA established guidelines for the descriptive data that should be concisely provided on a data sheet to serve as the basis for written hazard communication.

Milligrams per/liter (mg/L) A unit of concentration equal to one thousandth of a gram per one liter of water.

Miticide: An agent that kills mites.

Monitoring: Periodic or continuous surveillance or testing to determine the level of compliance with statutory requirements and/or pollutant levels in various media or in humans, plants, and animals.

Nematodes: Any of several worms of the phylum Nematoda, having unsegmented bodies, cylindrical bodies, often narrowing at each end, and including parasitic forms such as the hookworm and pinworm.

Nitrate: Plant nutrient and inorganic fertilizer that enters water supply sources from septic systems, animal feed lots, agricultural fertilizers, manure, industrial waste waters, sanitary landfill and the garage dumps.

Non-point source: Diffuse pollution sources (e.g., without a single point of origin or not introduced into a receiving stream from a specific outlet). The pollutants generally are carried off the land by storm water. Non-point sources can be divided into activities related to either land or water use including failing septic tanks, improper animal-keeping practices, and urban and rural runoff.

(NPDES) National Pollutant Discharge Elimination System

Pesticide: A chemical used to kill pests, especially insects.

(PET) Potential Evapo-Transpiration: The process that estimates actual water use by turf through measuring weather condition by means of a weather station.

Piezometer: A tube or monitoring well used to measure hydraulic head by determining the elevation of the water level in the tube or well.

Recharge Feature: a naturally occurring or man-made feature that allows water to enter an aquifer.

pH: An expression of the intensity of the basic or acidic condition of a solution.

(PVC) Polyvinyl Chloride: A common thermoplastic resin, used in a wide variety of manufactured products.

Recharge Zone: Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

(SAWS): San Antonio Water System

Sensitive Feature: Permeable geologic or manmade feature located on the Edwards Aquifer or Trinity Aquifer recharge zone or transition zone where a potential for hydraulic interconnectedness between the surface and the Edwards Aquifer exists, and rapid infiltration to the subsurface may occur. The determination of the sensitivity of any feature shall be made in accordance with TCEQ's June 6, 1999 "Instructions to Geologists for Geological Assessments" as amended or superseded from time to time.

Stomate: An opening on a leaf through which water evaporates.

Structural Controls: A range of pollution prevention best management practices ranging from vegetated buffers to on-site runoff detention and treatment facilities.

(TCEQ) Texas Commission on Environmental Quality

(TPDES) Texas Pollutant Discharge Elimination System

Tifdwarf: A hybrid drought resistant bermuda turf grass used extensively for golf course greens.

Tifway: A hybrid drought resistant bermuda turf grass used extensively for golf course fairways.

Trigger Levels: The level of analytes identified in water quality monitoring or sampling that triggers Corrective Action obligations of Developer, as more fully described in Section 5.0 and Sections 6.1 through 6.4.

(TSS) Total Suspended Solids: TSS represents the total amount of solid matter in a representative water sample that is retained by a membrane filter. It includes all sediment and other constituents that are fluid suspended.

(UST) Underground Storage Tank: Any one or combination of underground storage tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is ten percent or more below grade.

Underdrain. Perforated pipe, usually surrounded by cloth or porous filter that collects excess groundwater and transports through gravity to a collection point (French drain).

Wetwell. A below ground holding tank designed for the catchment and transfer of stormwater run-off.

(WPAP) A water pollution abatement plan, as described in Chapter 213 of the TCEQ's rules.

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

FORM OF SUPPLEMENTAL DECLARATION OF RESTRICTIVE COVENANTS

This SUPPLEMENT TO DECLARATION OF RESTRICTIVE COVENANTS (this "Supplement") is

				vestment Corporation, a ve Covenants ("Declaration of the Covenants of the	
				icial Public Records of R	
				he same meaning as defir	
A. 1	Developer reco	rded the Declara	tion in the Official	Records.	
В	At the time the	Declaration was	recorded, Develope	r did not know the exact lo	ocation of certain [Golf
Course Tracts/Ope	en Space Area]	, as more particu	alarly described in	Article 3 of the Declarati	on.
				Course Tract/ a tract of (Open Space Area] and
desires to supplem	ent the Declara	ation in accordan	nce with Article 3	of the Declaration.	
NOW TH	IEREFORE,	the Declaration is	s hereby supplement	nted as follows:	
Records, the portion Course Tract/ an O	ons of the Lan	d described as sea] within the mea	et forth in Schedul uning of the Declara	date this Supplement is re e 1 attached to this Suppl tion and shall be held, own pace Area] as set forth in	lement will be [a Golf ned, used and occupied
2. Miscel in full force and ef				the provisions of the Decl	aration shall continue
Witness th	ne hand of an a	authorized repres	entative of Develop	per on the acknowledgme	nt date noted below.
DEVELOPER:			LUMBERME a Delaware con	N'S INVESTMENT CO	RPORATION,
			By:		H 3
			Title:		
THE STATE OF	TEXAS	§ §			
COUNTY OF		§			
This instr	ment was ack	nowledge before	me on	, 2002, by TION, a Delaware corpora	ation on behalf of said
corporation.	ZOMBERG	EN SHVESIN	ien i com one	A Delawale corpor	nion, on ocidan or said
			Notary Public, S	State of Texas	
My Commission Ex	mires:				
yry Commussion Ex			Printed/Typed r	name	

SCHEDULE 1 TO

SUPPLEMENT TO DECLARATION OF RESTRICTIVE COVENANTS

[DESCRIPTION OF GOLF COURSE TRACTS/ OPEN SPACE AREA]

EXHIBIT E

EXHIBIT "E" TO SERVICES AGREEMENT IN LIEU OF ANNEXATION

WAGE STANDARDS AGREEMENT

This WAGE STANDARDS AGREEMENT (this "Agreement") is made as of the Effective Date (herein defined) by

CITY:

CITY OF SAN ANTONIO, TEXAS, a municipal corporation; and

DEVELOPER:

LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation.

RECITALS

- A. Developer is the owner of an aggregate of approximately 2,855.7473 acres of real property in Bexar County, Texas, consisting of the Annexation Tracts (defined herein), and the Non-Contiguous Tract (defined herein), which is located within the exclusive extraterritorial jurisdiction of the City of San Antonio, Texas, a home rule city under Article 11, Section 5 of the Texas Constitution and municipal corporation primarily situated in Bexar County, Texas.
- B. Developer desires to develop the Land with a high quality, master-planned community; a full service, resort style hotel; single and multi-family residential housing; related commercial uses; and at least (2) golf courses.
- C. Pursuant to Section 43.0563, Texas Local Government Code, City, the five representatives appointed by the Bexar County Commissioners Court under Section 43.0562(b) and Developer have entered into that certain Agreement For Services In Lieu of Annexation (the "Services Agreement"), pursuant to which City has agreed to the continuation of the extraterritorial status of the Annexation Tracts for a period of fifteen (15) years, subject to the terms of the Services Agreement.
- D. Pursuant to the Services Agreement, Developer has agreed to construct a Hotel (herein defined) and two golf courses to be operated by PGA on the Annexation Tracts and contemplates an additional Hotel and golf course.
- E. As a condition to City's agreements under the Services Agreement, Developer has covenanted and agreed to contractually impose certain wage standards for each Hotel and golf course to be operated upon the Annexation Tracts, as more fully set forth in this Agreement.
- F. Pursuant to the Services Agreement, this Agreement is to be fully effective from and after the Effective Date until the termination of the Services Agreement.

NOW, THEREFORE, Developer does hereby covenant to and agree with City, as follows:

Definitions

For purposes hereof, the following terms are defined as set forth below:

"Agreement" means this Wage Standards Agreement.

"Annexation Tracts" means the four separate tracts of land as described on Exhibit A-1.

"City" means as defined in the Recitals.

"Compliance Report" means each semi-annual report to be provided in accordance with Section 3.1 of this Agreement.

"Developer" means Lumbermen's Investment Corporation, a Delaware corporation, and its successors or permitted assigns.

"Director of OED" means the Director of City's Office of Economic Development or such other designee as may be appointed by City, from time to time, to perform the functions of the Director of OED under the terms of this Agreement.

"Effective Date" means November 1, 2002.

"Employees" means Hotel Employees and PGA Employees.

"Employee Benefits" means, at a minimum, a health care plan with access to coverage for dependents and paid vacation benefits.

"Event of Non-Compliance" means an event of non-compliance described in Section 4.1 of this Agreement.

"Full-Time Employees" means Employees who are normally scheduled to work at least thirty-six (36) hours a week.

"Golf Course Tracts" means those portions of the Annexation Tracts so identified and described in the Declaration of Restrictive Covenants of even date, executed by Developer, as Declarant, and recorded in the Official Records, or so identified and described in any supplement or amendment thereto.

"Golf Course Related Improvements" means, collectively, those improvements related to the operation of a golf course, including (without implied limitation) clubhouses, golf learning or teaching facilities, driving ranges, pro shops, vending or snack facilities, maintenance facilities and areas, golf cart repair and parking areas.

"Hotel" means each hotel to be constructed on any Annexation Tract.

"Hotel Completion Date" means the date on which Bexar County has issued a final certificate of compliance to the owner of a Hotel inspected pursuant to Section 233.064, Local Government Code, evidencing the inspector's determination that the completed Hotel complies with Bexar County's fire code.

"Hotel Employee" means an employee of a Hotel Owner or Hotel Manager who works at a Hotel or a Leased Employee who works under the direction of a Hotel Owner or Hotel Manager at a Hotel, including an employee who is full-time, part-time, seasonal or temporary, but excluding the positions of waiter/waitress, bell staff, valet for automobile parking, concierge and bartender.

"Hotel Manager" means the hotel management company which operates a Hotel and its successors and assigns.

"Hotel Tract" means the tract or parcel of an Annexation Tract upon which a Hotel has been constructed.

"Leased Employee" means an employee of an employer which is operated as an employee leasing company.

"Non-Contiguous Tract" means the tract of land as described on Exhibit A-2.

"Notice of Non-Compliance" means a written notice which describes an Event of Non-Compliance and identifies the Wage Standard Employer which is not in compliance with the requirements of this Agreement.

"OED" means City's Office of Economic Development or such other designee as may be appointed by City, from time to time, to perform the functions of OED under the terms of this Agreement.

"PGA" means The Professional Golfers' Association of America, and its successors and assigns.

"PGA Employees" means the Full-Time Employees of (i) PGA and (ii) any other owner or operator of a golf course or a Golf Course Related Improvement located on an Annexation Tract, in any of the employment positions described in "Exhibit B" to this Agreement, except interns, apprentices, management trainees and volunteers.

"Semi-Annual Reporting Period" means (i) the six (6) month period commencing on the first (1st) day of the first calendar month following the Hotel Completion Date, or (ii) any successive six (6) month period thereafter during the Term of this Agreement.

"Services Agreement" means as defined in the Recitals.

"Skills Development Period" means the ninety (90) day period following first employment of an Employee that affords the opportunity for such Employee to complete specialized training and/or a probationary period.

"Term of this Agreement" means the duration of this Agreement, commencing on the Effective Date and terminating on the date on which the Services Agreement has terminated.

"Wage Standard" means, if the Hotel Completion Date occurs

- (a) prior to October 1, 2003, the sum of \$8.75 per hour,
- (b) on or after October 1, 2003 but before October 1, 2004, the sum of \$9.00 per hour,
- (c) on or after October 1, 2004 but before October 1, 2005, the sum of \$9.25 per hour,
- (d) on or after October 1, 2005 but before October 1, 2006, the sum of \$9.50 per hour,
- (e) on or after October 1, 2006 but before October 1, 2007, the sum of \$9.75 per hour, or
- (f) after October 1, 2007, the sum of \$10.00 per hour.

"Wage Standard Employer" means PGA, each Hotel Owner and each Hotel Manager.

Article 1. Developer's Obligations

Developer shall obtain the written agreement of each Wage Standard Employer that such Wage Standard Employer will be bound by and comply with the Wage Standard, Employee Benefits, Compliance Reporting, audit and other requirements of this Agreement to be performed or observed by each Wage Standard Employer. Such written agreement shall recognize City as a third party beneficiary thereof and shall authorize OED to perform the audit functions described in Section 3.2 of this Agreement and shall grant to City the access to information therein described. The agreement between Developer and each Wage Standard Employer shall be binding upon the successors and assigns of each party thereto and shall remain in effect so long as the Services Agreement shall remain in effect. Developer shall provide to City a copy of each such agreement and any amendments or supplements thereto.

Article 2. Wage and Benefit Requirements

- 2.1 Required Wage Standard. From and after the Hotel Completion Date, and following any Skills Development Period, each Wage Standard Employer shall compensate its Employees for employment services at an hourly rate not less than the applicable Wage Standard.
- **2.2** Benefits. Following any Skills Development Period, each Wage Standard Employer shall provide or make available, as applicable, the Employee Benefits to its Full-Time Employees.

Article 3. Reporting Requirements and Audit

- 3.1 Compliance Reports. Not later than thirty (30) days following each Semi-Annual Reporting Period, each Wage Standard Employer shall deliver to the Director of OED a written Compliance Report which provides the following information for the preceding Semi-Annual Reporting Period:
- 3.1.1 the actual number of Employees employed by such Wage Standard Employer at the commencement of such Semi-Annual Reporting Period and the actual number of Employees hired by such Wage Standard Employer during such Semi-Annual Reporting Period;
- 3.1.2 the actual number of Employees of such Wage Standard Employer who (i) received the required Wage Standard and (ii) did not receive the Wage Standard;
- 3.1.3 the actual number of Full-Time Employees of such Wage Standard Employer who are not participating or receiving each of the following Employee Benefits and the reasons for such non-participation: (i) the Wage Standard Employer's offered group health care plan; (ii) dependent health care coverage in such group health care plan; and (iii) paid personal leave benefits; and
- 3.1.4 the actual number of Employees of such Wage Standard Employer in the Skills Development Period and the date(s) on which the Skills Development Period expired or will expire for each such Employee.
- 3.2 Audit. Each Wage Standard Employer shall permit OED to review the personnel records of the Employees of such Wage Standard Employer, as reasonably necessary to verify the accuracy of the Compliance Reports required under Section 3.1. Following reasonable notice and during normal business hours, the personnel records of the Wage Standard Employer will be reviewed by OED at the site where the same may be located during the normal course of business. Any information which is not required by law to be made public may not be copied or disclosed by the reviewing party, except as necessary to enforce the agreements and obligations of Developer or a Wage Standard Employer under this Agreement.

Article 4. Non-Compliance

- 4.1 Events of Non-Compliance. An Event of Non-Compliance shall have occurred and be continuing if:
- 4.1.1 any Compliance Report provided pursuant to Section 3.1 reflects that the Wage Standard Employer is not in compliance with the Wage Standards and Employee Benefits requirements set forth in Article 2 of this Agreement;
- 4.1.2 an audit by OED pursuant to Section 3.2 or other information available to OED reveals that any Compliance Report inaccurately states or omits the information required to be set forth therein;
 - 4.1.3 a Wage Standard Employer shall fail to comply with the audit requirements of Section 3.2;
- 4.1.4 a Wage Standard Employer shall fail or refuse to provide a Compliance Report to the Director of OED.

or

4.2 Notice of Non-Compliance. If OED gives Notice of Non-Compliance to Developer, Developer shall provide a copy of such Notice of Non-Compliance to each Wage Standard Employer identified in the Notice of Non-Compliance and shall make written demand upon each such Wage Standard Employer to cure the Event(s) of Non-Compliance specified in such Notice of Non-Compliance. Developer shall simultaneously provide a copy of such written demand to City.

- 4.3 Required Curative Action for an Event of Non-Compliance. An Event of Non-Compliance shall be deemed cured by the following action taken within the cure period prescribed herein for such Event of Non-Compliance:
- 4.3.1 Wage Requirements. If a Notice of Non-Compliance describes an Event of Non-Compliance under Subsection 4.1.1, such Event of Non-Compliance shall be cured by the following actions:
- 4.3.1.1 If any Employee has not been paid in accordance with the Wage Standard, each such Employee shall be paid, not later than the third succeeding payday for such Employee following the Notice of Non-Compliance, a lump sum payment equal to (i) all amounts by which the Employee has been underpaid as of the date of such lump sum payment, plus (ii) interest on such underpayment at the prime rate then charged by Frost Bank from the date of the underpayment until paid, and the Employee shall thereafter be paid in accordance with the required Wage Standard.
- 4.3.1.2 If any Full-Time Employee has not been provided full Employee Benefits in accordance with this Agreement, each such Full-Time Employee shall commence to receive such full Employee Benefits and shall be paid a cash sum equal to twenty-five percent (25%) of the Full-Time Employee's wages during the period of time that the Full-Time Employee was not provided Employee Benefits in breach of this Agreement, such benefits to be instated and payment to made not later than the third succeeding payday for such Full-Time Employee.
- 4.3.1.3 Developer or the Wage Standard Employer for such Employee shall provide, within sixty (60) days of a Notice of Non-Compliance, written certification to OED that the required cure has been effected for all Events of Non-Compliance described in the Notice of Non-Compliance.
- 4.3.2 Inaccurate Compliance Reporting. If a Notice of Non-Compliance describes an inaccurate or incomplete Compliance Report, the subject Compliance Report shall be corrected and re-issued within sixty (60) days following the Notice of Non-Compliance.
- 4.3.3 Audit Deficiencies. If a Notice of Non-Compliance describes inaccurate or omitted information which has been made available to OED in connection with an audit pursuant to Section 3.2, the Wage Standard Employer shall provide such corrected or additional information to OED within thirty (30) days following the Notice of Non-Compliance.
- 4.3.4 Omitted Compliance Reporting. If a Notice of Non-Compliance describes a failure to timely provide a Compliance Report to OED, the Compliance Report must be provided to OED within thirty (30) days following such Notice of Non-Compliance.
- 4.4 Dispute Resolution. If a Wage Standard Employer disputes the existence of an Event of Non-Compliance, the affected Wage Standard Employer, at its sole expense, shall have the right to retain an independent accounting firm to examine the information described in the Notice of Non-Compliance and the supporting information related thereto. If such independent accounting firm issues a written opinion that denies the existence of the Event of Non-Compliance within fifteen (15) days following the Notice of Non-Compliance, and OED has not withdrawn such Notice of Non-Compliance within five (5) days following receipt of such written opinion, the issue in dispute shall be submitted to binding arbitration under the expedited rules of the American Arbitration Association, with all proceedings held in Bexar County, Texas, and the prevailing party shall be reimbursed for the costs thereof. Until the date of the issuance of the arbitrator's final report concluding such arbitration proceedings, the cure period applicable to such Event of Non-Compliance will be tolled.
- 4.5 Effect of Continuing Non-Compliance. City may, at its option, terminate this Agreement if, following Notice of Non-Compliance to Developer, an Event of Non-Compliance has not been cured within the applicable cure period, in the manner specified in Section 4.3 hereof, regardless of whether or not Developer has complied with its obligations hereunder to make written demand on the Wage Standard Employer named in such Notice of Non-Compliance. Developer confirms that termination of this Agreement in accordance with the terms of this Agreement is a "termination event" under the Services Agreement.

Article 5. Default by Developer

If Developer shall default in its obligations under Article 1 of this Agreement, City may, at its option, terminate this Agreement upon notice to Developer and may additionally pursue any and all remedies at law and/or in equity. No remedy stated herein is an exclusive remedy and pursuit of any remedy is not an election of remedies precluding the availability of any other remedy. No failure to exercise any remedy by City will effect a waiver of such remedy.

Article 6. Miscellaneous Provisions

6.1 Notices. Any demand, request or other notice required or permitted to be given hereunder, or otherwise given in regard to this Agreement shall be in writing and the same shall be given and be deemed to have been served and received (a) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is being given (or, if applicable, when delivery is refused by the party to whom notice is being given), or (b) if mailed, on the date which is two (2) business days following the date on which such notice is placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party to whom notice is being given at the address for such party hereinafter specified:

City: City of San Antonio

100 Military Plaza, 1st Floor San Antonio, Texas 78207

Attention:

Director of Development Services

With copies to:

City Clerk

100 Military Plaza, 2nd Floor San Antonio, Texas 78205, and

City Attorney

100 Military Plaza, 3rd Floor San Antonio, Texas 78205

Developer:

Lumbermen's Investment Corporation

5495 Beltline Road, Suite 225

Dallas, Texas 75240 Attention: Pre

President

With a copies to:

Lumbermen's Investment Corporation

1300 S. MoPac Expressway

Austin, Texas 78746

Attention:

General Counsel

Akin Gump Strauss Hauer & Feld LLP

300 Convent, Suite 1500 San Antonio, Texas 78205 Attention: M. Paul Martin

- **6.2** Severability. The invalidation of any one of the covenants or agreements herein contained, or the failure to enforce any of such covenants or agreements at the time of its violation, shall in no event affect any of the other covenants or agreements contained nor be deemed a waiver of the right to enforce the same or any other covenant or agreement thereafter.
- 6.3 Continuing Effect. This Agreement shall be binding upon Developer and its successors, and assigns, except to the extent this Agreement may be terminated pursuant to the terms hereof.
- 6.4 Headings. The titles, headings, and captions used in this instrument are for convenience only and are not to be used in construing this instrument or any part hereof.

- 6.5 Exhibits. All documents referred to herein and all documents attached hereto are incorporated herein for all purposes.
- 6.6 Interpretation. If this Agreement or anything set forth herein is or may be capable of interpretation in two or more conflicting ways, then the interpretation which is most nearly in accord with the general principals, purposes and objectives of this Agreement shall govern and control the meaning thereof. If any punctuation, word, clause or provision necessary to give effect to any other word, clause or provision hereof has been omitted, then it is understood that such omission was unintentional and the omission may be supplied by inference.
- 6.7 Attorney's Fees. If Declarant or City incurs reasonable expenses of any kind, including attorneys' fees, to enforce this Agreement and shall prevail in such enforcement, the prevailing party is entitled to recover such expenses from the other party to this Agreement.
- 6.8 Waiver. Any covenant, agreement or obligation of any party to this Agreement will not be waived or rendered unenforceable by reason of any lack of enforcement thereof.
 - 6.9 Public Record. This Agreement may be filed in the Official Public Records of Bexar County, Texas.
 - 6.10 Effective Date. This Agreement is dated as of the Effective Date.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

Signed by each party as of the date of the acknowledgment of such party.

DE	V.	O,	P	E,	K:

LUMBERMEN'S INVESTMENT CORPORATION,

a Delaware corporation

By:

John Pierret

Executive Vice President

THE STATE OF TEXAS

§

COUNTY OF BEXAR

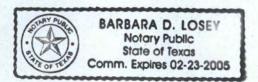
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[seal]

Notary Public, State of Texas

My Commission Expires:

Printed/Typed Name



CITY:	CITY OF SAN ANTONIO, TEXAS
	By: Mustralin State
	Terry M Brechtel
SAN	City Manager
AATESE:	
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200 200 10	
- Themany. Le	deem
City Clark	

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APPROVED AS TO FORM:	
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Mucho Mant	
(Marky / Marins	
Andrew F. Martin, City Attorne	
THE STATE OF TEXAS	§
COUNTY OF BEXAR	
	Christopher J. Braz
This instrument was ac	cknowledged before me on April 7, 2003, by Terry M. Brechtel,
as City Manager of the Cit Y Of	F SAN ANTONIO, TEXAS, a municipal corporation, on behalf of said corporation.
[seal] IIIIDA S.	Low Military Clark
ARY PU	Mindu S. luper Notary Public, State of Texas
Ex. o.	
My Commission Expires:	melinda S. lopez
ATE OFT	Printed/Typed Name

Signed by each party as of the date of the acknowledgment of such party.

DEVELOPER:		LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation			
		Ву:			
		John Pierret			
		Executive Vice President			
THE STATE OF TEXAS	§				
	§				
COUNTY OF BEXAR	§				
This instrument was a	cknowledged before	re me on ,2002, by John Pierret, Executive			
		ENT CORPORATION, a Delaware corporation, on behalf of said			
[seal]					
		Notary Public, State of Texas			
My Commission Expires:					
		Printed/Typed Name			

CITY:		CITY OF SAI	N ANTONI	O, TEXAS	
		**			
		Title:			,
ATTEST:					
City Clerk					
APPROVED AS TO FORM:					
City Attorney					
THE STATE OF TEXAS	§ §				
COUNTY OF BEXAR	§				
This instrument was			on	4.1. 07771.07.0	_, 2002, by
TEXAS, a municipal corporation,	on behalf of said	corporation		of the CITY OF S	AN ANTONIO,
	on ochain or said	corporation.			
[seal]					
		Notary Public,	State of Texa	as	
My Commission Expires:			3.		
		Printed/Typed	Name		

EXHIBIT A-1

TO

WAGE STANDARDS AGREEMENT

DESCRIPTION OF ANNEXATION TRACTS

TRACT ONE

A 1392.7 acre, or 60,666,506 square feet, more or less, tract of land being comprised of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and that 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the Rompel Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 1392.7 acre tract being more fully described as follows:

BEGINNING: A

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, a corner of the aforementioned 1394.189 acre tract;

THENCE:

N 23°23'37"W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47"W, 1274.56' by deed, the distance of 1274.56 feet being comprised of this call for 1203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE:

N 23°30'17"W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

THENCE:

N 23°32'11"W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, said iron rod also being the southwest corner of a 229.000 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas, (N 25°07'30"W by deed);

THENCE:

N 73°12'18"E, departing said east line of Fossil Ridge Subdivision, a distance of 2007.69 feet to a point;

THENCE:

N 01°22'40"W, a distance of 376.50 feet to a point;

THENCE:

N 13°37'20"E, a distance of 825.00 feet to a point;

THENCE:

N 23°30'23"W, a distance of 400.85 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N65°11'27" W, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of N 00°39'05" E, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of N58°53'08" E, a radius

of 1000.00 feet, a central angle of 55°55'25", a chord bearing and distance of N 03°09'09" W, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: N 31°06'52"W, a distance of 110.00 feet to a point;

THENCE: S 58°53'08"W, a distance of 486.65 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of \$23°53'08" W, a radius of

1000.00 feet, a central angle of 55°00'00", a chord bearing and distance of S 86°23'08" W, 923.50

feet, and an arc length of 959.93 feet to a point;

THENCE: N 66°06'52"W, a distance of 1650.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of N06°06'52" W, a radius

of 1400.00 feet, a central angle of 30°00'00", a chord bearing and distance of N 81°06'52" W, 724.69

feet, an arc length of 733.04 feet to a point;

THENCE: S 83°53'08"W, a distance of 126.94 feet to a point;

THENCE: S 23°30'23"E, a distance of 603.61 feet to a found ½" iron rod with a yellow cap marked "Pape-

Dawson" at an interior corner of the said 1394.189 acre tract being the northeast corner of the

aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract;

THENCE: S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1581.35 feet

to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 87°49'00"W, 7167.93' by deed, the distance of 7167.93 feet being comprised of this call for 1581.35 feet, the next call for 1373.99 feet, 4091.02 feet along the north line of the aforementioned 194.2434 acre tract and a distance of 21.92 feet to the old right-of-way line of Bulverde Road which is described in a

Bulverde Road right-of-way map dated November of 1985);

THENCE: S 89°24'59"W, along and with the north line of the 403.9458 acre tract, a distance of 1373.99 feet

to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" at the northwest corner of the

403.9458 acre tract and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE: S 89°24'59"W, along and with the south line of the 1394.189 acre tract and the north line of the

194.2434 acre tract, a distance of 4090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road and at the northwest corner of the said

194.2434;

THENCE: Along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 10°32'43" W, a distance of 2.67 feet to a point;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 22°37'38", a chord bearing and distance of N 00°46'06"E, 391.97 feet and an arc length of 394.52

feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 12°04'55"E, a distance of 214.65 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at a point of curvature;

Northeasterly, with a curve to the right, said curve having a radius of 1102.00 feet, a central angle of 30°40'02", a chord bearing and distance of N 27°24'56" E, 582.82 feet, and an arc length of 589.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 42°44'57"E, a distance of 274.54 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of a 135.532 acre tract described in instrument recorded in Volume 5350, Page 2076-2081 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 89°25'08"E, departing the east right-of-way line of Bulverde road, along and with the south line of the 135.532 acre tract, a distance of 5968.30 feet to a found ½" iron rod at the southeast corner of the said 135.532 acre tract;

THENCE: N 23°29'40"W, a distance of 1190.36 feet, (N 25°05'12"W, 3406.40' by deed, the combined deed distance of 3406.40 feet in this call and that of the deed distance of 1064.15 feet quoted in the next call, being comprised of this call of 1190.36 feet, and next two calls of 2783.83 feet, and 494.80 feet), to a found ½" iron rod at the northeast corner of the 135.532 acre tract and the southeast corner of a 1350.297 acre tract recorded in Volume 4859, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°29'40"W, along and with the east line of the 1350.297 acre tract, a distance of 2783.83 feet, (N 25°18'04"W, 1064.15' by deed) to a found ½" iron rod marked MBC at an angle point;

THENCE: N 23°54'32"W, along and with the east line of the 1350.297 acre tract, a distance of 494.80 feet to a found ½" iron rod at the northwest corner of this tract;

THENCE: N 55°13'56"E, along and with the south line of the 1350.297 acre tract, a distance of 346.08 feet to a found ½" iron rod at an angle point;

THENCE: N 55°17'34"E, along and with the south line of the 1350.297 acre tract, a distance of 381.68 feet to a found ½" iron rod at an angle point;

THENCE: N 54°44'11"E, along and with the south line of the 1350.297 acre tract, a distance of 894.23 feet to a found ½" iron rod at an angle point, (N 53°31'36"E, 2026.43' by deed);

THENCE: N 55°46'21"E, along and with the south line of the 1350.297 acre tract, a distance of 403.85 feet to a found iron rod in the northwest corner of a 785.4 acre tract out of a 927.064 acre tract recorded in Volume 5362, Pages 756-764 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 54°16'26"E, departing the south line of the 1350.297 acre tract, along and with the west line of the 785.4 acre tract, a distance of 3325.13 feet to a found iron rod at an angle point, (S 55°52'24"E, 3325.13' by deed);

THENCE: S 54°11'40"E, along and with the west line of the 785.4 acre tract, a distance of 5267.86 feet to a fence post at an angle point, (S 55°47'33"E, 5277.27' by deed);

THENCE: S 50°09'55"E, along and with the west line of the 785.4 acre tract, a distance of 253.64 feet to a found iron rod in the northeast corner of a 51.788 acre tract described in instrument recorded in Volume 7002, Pages 658-662 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 03°57'49"E, departing the west line of the 785.4 acre tract, along and with the west line of the 51.788 acre tract, passing at 1048.25 feet a fence post at the southwest corner of the 51.788 acre tract and the northwest corner of a 30.04 acre tract described in instrument recorded in Volume 5362, Pages 1539-1542 of the Official Public Records of Real Property of Bexar County, Texas and continuing along and with the west line of the 30.04 acre tract a total distance of 1479.02 feet to a

set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (\$05°30'33"E, 1478.86' by deed);

THENCE:

S 08°30'05"E, along and with the west line of the 30.04 acre tract, a distance of 382.99 feet to a found ½" iron rod at an angle point (S 09°56'00"E, 382.42' by deed);

THENCE:

S 01°31'55"W, along and with the west line of the 30.04 acre tract, passing at 396.50 feet a fence post at the southwest corner of the said 30.04 acre tract and the northwest corner of a 24.95 acre tract described in instrument recorded in Volume 4884, Pages 1495-1498 of the Official Public Records of Real Property of Bexar County, Texas, and continuing along and with the west line of the 24.95 acre tract a total distance of 1192.66 feet to a found 5/8" iron rod at the southwest corner of the 24.95 acre tract and the northwest corner of a 185.610 acre tract of land described in instrument recorded in Volume 4525, Pages 164-167 of the Deed Records of Bexar County, Texas, (S 00°10'35"E, 1193.13' by deed);

THENCE:

S 16°01'29"W, along and with the west line of the 185.610 acre tract, a distance of 5051.21 feet, (S 14°18'24"W, 2685.40' and S 14°33'47"W, 2366.39' by deed); to a found ½" iron rod in the north right-of-way line of Evans Road, a 110 foot right-of-way;

THENCE:

N 77°10'31"W, along and with the north right-of-way line of Evans Road, passing at 1600.26 feet the southwest corner of Evans – North Loop Subdivision recorded in Volume 9544, Page 33 of the Deed and Plat Records of Bexar County, Texas, and continuing for a total distance of 2134.38 feet to a found ½" iron rod at a point of curvature;

THENCE:

Northwesterly, along the arc of a curve to the right, said curve having a radius of 2578.39 feet, a central angle of 8°52'15", a chord bearing and distance of N 72°44'24" W, 398.80 feet, and an arc length of 399.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

THENCE:

N 68°18'16"W, a distance of 213.96 feet to the POINT OF BEGINNING and containing 1392.7 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

October 22, 2002

JOB No.:

3538-24

DOC.ID.:

H:\3538\24\WORK\FN\021018-A4-1394.doc

TRACT TWO

A 229.0 acre, or 9,973,288 square feet, more or less, tract of land being comprised of that 229.00 acre save and except tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, said 229.00 acre save and except tract being out of a 1623.189 acre tract recorded in Volume 3041, Pages 979-983 of the Official Public Records of Real Property of Bexar County, Texas. Said tract being out of the E. Martin Survey No. 89, Abstract 524, County Block 4909, the El Paso Irr. Co. Survey No. 92.1, Abstract 845, County Block 4910 and the Adolphus Harnden Survey No. 478 1/3, Abstract 350, County Block 4911 of Bexar County Texas. Said 229.0 acre tract being more fully described as follows:

COMMENCING: At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the north right-of-way line of Evans Road, a 110-foot right-of-way, said iron rod also being the southeast corner of Fossil Ridge Subdivision, Unit 1, recorded in Volume 9548, Pages 197-204 of the Deed and Plat Records of Bexar County, Texas, out of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas, and a corner of a 1,394.189 acre tract described in instrument recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: N 23°23'37" W, bearings being based of the North American Datum of 1983, from State Plane Coordinates established for the Texas South Central Zone, departing the north right-of-way line of Evans Road, along and with the east line of Fossil Ridge Subdivision, a distance of 1,203.02 feet to a found ½" iron rod at an angle point, (N 24°59'47" W, 1,274.56' by deed, the distance of 1,274.56 feet being comprised of this call for 1,203.02 feet, and the remainder being the distance to the old right-of-way line of Evans Road which is described in a Evans Road right-of-way map dated April of 1987);

THENCE: N 23°30'17" W, along and with the east line of Fossil Ridge Subdivision, a distance of 450.07 feet to a found ½" iron rod set in concrete at an angle point;

THENCE: N 23°32'11" W, along and with the east line of Fossil Ridge Subdivision, a distance of 709.21 feet to the POINT OF BEGINNING at a found ½" iron rod with a yellow cap marked "Pape-Dawson", being the southwest corner of the 229.0 acre tract herein described;

THENCE: N 23°31'11" W, along and with the east line of Fossil Ridge Subdivision, passing at 104.93 feet a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of Lot 17, Block 4 of Fossil Ridge Subdivision, and continuing for a total distance of 1,289.32 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at the northeast corner of said Fossil Ridge Subdivision;

THENCE: N23°31'11" W, along and with the east line of the aforementioned 403.9458 acre Fossil Ridge Subdivision parent tract, a distance of 2,726.01 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an interior corner of the said 1,394.189 acre tract;

THENCE: N 23°30'23" W, a distance of 603.61 feet to a point;

THENCE: N 83°53'08" E, a distance of 126.94 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 06°06'52" E, a radius of 1,400.00 feet, a central angle of 30°00'00", a chord bearing and distance of S 81°06'52" E, 724.69 feet, an arc length of 733.04 feet to a point;

THENCE: S 66°06'52" E, a distance of 1,650.00 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of N 23°53'08" E, a radius of 1,000.00 feet, a central angle of 55°00'00", a chord bearing and distance of N 86°23'08" E, 923.50 feet, and an arc length of 959.93 feet to a point;

THENCE: N 58°53'08" E, a distance of 486.65 feet to a point;

THENCE: S 31°06'52" E, a distance of 110.00 feet to a point;

THENCE: Along the arc of a curve to the right, said curve having a radial bearing of S 58°53'08" W, a radius

of 1,000.00 feet, a central angle of 55°55'25", a chord bearing and distance of S 03°09'09" E, 937.77

feet, and an arc length of 976.05 feet to a point;

THENCE: Along the arc of a curve to the left, said curve having a radial bearing of S 5°11'27" E, a radius of

760.00 feet, a central angle of 48°18'57", a chord bearing and distance of S00°39'05" W, 622.06 feet,

and an arc length of 640.89 feet to a point;

THENCE: S 23°30'23" E, a distance of 400.85 feet to a point;

THENCE: S 13°37'20" W, a distance of 825.00 feet to a point;

THENCE: S 01°22'40" E, a distance of 376.50 feet to a point;

THENCE: S 73°12'18" W, a distance of 2,007.69 feet to the POINT OF BEGINNING and containing 229.0

acres of land in Bexar County, Texas. Said tract being described in accordance with a survey

prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 22, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-A3-229

TRACT THREE

A 187.20 acre, or 8,154,390 square feet, more or less, tract of land out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 in Bexar County, Texas. Said 187.20 acre tract being more fully described as follows:

BEGINNING:

At a found ½" iron rod with a yellow cap marked "Pape-Dawson" in the east right-of-way line of Bulverde Road, an 86-foot right-of-way, being at a northwest corner of Fossil Creek Subdivision, Unit 1, recorded in Volume 9541, Pages 177-178 of the Deed and Plat Records of Bexar County, Texas, and the southernmost corner of the herein described tract;

THENCE:

Northwesterly, along and with the east right-of-way line of Bulverde Road with a curve to the left, having a radial bearing of S 67°45'32" W, a radius of 1,313.00 feet, a central angle of 22°59'41", a chord bearing and distance of N 33°44'18" W, 523.42 feet and an arc length of 526.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 1.511 acre tract known as Parcel 12E, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 1.511-acre tract the following bearings and distances;

N 04°41'26" W, a distance of 198.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 21°13'51" W, a distance of 59.48 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 44°11'00" W, a distance of 83.79 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 63°24'38" W, a distance of 432.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 70°15'43" W, a distance of 71.04 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 79°40'49" W, a distance of 370.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 1.511-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 58°46'37" W, a distance of 310.51 feet, to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 1002.00 feet, a central angle of 34°57'20', a chord bearing and distance of N 41°17'57" W, 601.87 feet and an arc length of 611.31 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 23°49'18" W, a distance of 788.47 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of curvature;

Northwesterly with a curve to the left, said curve having a radius of 1,475.00 feet, a central angle of 14°53'03", a chord bearing and distance of N 31°15'49" W, 382.10 feet and an arc length of

383.17 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at the south corner of a 0.034 acre tract known as Parcel 12G, formerly being a portion of the right-of-way of Old Bulverde Road and deeded to Evans Road North Loop Venture in an unrecorded deed executed by County Judge Tom Vickers in July of 1988;

THENCE:

Departing the east right-of-way line of Bulverde Road, along and with the boundary of the 0.034-acre tract the following bearings and distances;

N 30°24'18" W, a distance of 110.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 64°10'27" W, a distance of 52.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the east right-of-way line of Bulverde Road;

THENCE:

Departing the boundary of the 0.034-acre tract, along and with the east right-of-way line of Bulverde Road the following bearings and distances;

N 41°59'45" W, a distance of 123.38 feet to a found 1/2" iron rod at a point of curvature;

Northeasterly with a curve to the right, said curve having a radius of 999.00 feet, a central angle of 31°27'02", a chord bearing and distance of N 26°16'14" W, 541.51 feet and an arc length of 548.37 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at a point of tangency;

N 10°32'43" W, a distance of 219.57 feet to a found ½" iron rod at the northwest corner of the aforementioned 194.2434 acre tract, the west corner of a 1394.189 acre tract recorded in Volume 5792, Pages 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas and at an angle point;

THENCE:

N 89°24'59" E, departing the east right-of-way line of Bulverde road, along and with the south line of the 1,394.189 acre tract, a distance of 4,090.16 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" at the northwest corner of a 403.9458 acre tract described in instrument recorded in Volume 5257, Pages 1293-1301 of the Official Public Records of Real Property of Bexar County, Texas and the northeast corner of the aforementioned 194.2434 acre tract;

THENCE:

S 19°21'43" W, along and with the west line of the 403.9458 acre tract, a distance of 1,027.05 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S17°48'10" W, 1,026.69 feet by deed);

THENCE:

S 89°26'18" W, along and with the 403.9458 acre tract, a distance of 480.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

THENCE:

S 00°19'34" E, along and with the 403.9458 acre tract, passing at 1,437.69 feet a found 60 penny nail at the northwest corner of Fossil Creek Subdivision, Unit 1, and continuing for a total distance of 2,422.64 feet to a found ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point, (S 01°56'52" E, 2,422.66 feet by deed);

THENCE:

S 60°02'12" W, along and with Fossil Creek Subdivision, Unit 1, a distance of 500.02 feet to the POINT OF BEGINNING and containing 187.20 acres of land, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: October 18, 2002

JOB No.: 3538-24

DOC.ID.: 3538\24\Word\FN\021018-a1-194

TRACT FOUR

A 785.4 acre, or 34,210,000 square feet, tract of land being the remainder of that 927.064 acre tract described in deed from Henry Van de Walle et al to Dan F. Parman in Volume 3089, Page 1393-1399 of the Official Public Records of Real Property of Bexar County, Texas, and conveyed to Peter Wolverton in Volume 5382, Page 756-764 of the Official Public Records of Real Property of Bexar County, Texas out of the E. Martin Survey 89, Abstract 524, County Block 4909, the E. Gonzales Survey 441, Abstract 288, County Block 4902, the Salvador Flores Survey No. 440, Abstract 243, County Block 4907, the Jil Jimenez Survey 358, Abstract 821(Bexar) 682(Comal), County Block 4905, the W. H. Hughes Survey No. 478, Abstract 345(Bexar) 364(Comal), County Block 4906, and the F. Valdez Survey No. 478½, Abstract 787, County Block 4908, in Bexar and Comal Counties, Texas. Said 785.4 acres being more particularly described as follows:

BEGINNING:

at a set ½" iron rod with yellow cap marked "Pape-Dawson" at the southernmost corner of this tract, on the south line of said 927.064 acre tract, at the southwest corner of a 99.900 acre tract out of said 927.064 acre tract, the southwest corner of said 99.900 acre tract and said 927.064 acre tract being S 64°40'20" E, a distance of 780.00 feet to a found ½" iron rod, S 65°48'16" E, a distance of 1696.16 feet to a found ½" iron rod;

THENCE:

Along and with the south line of said 927.064 acre tract the following calls and distances:

N 65°40'20"W, at 29.25 feet passing the northeast corner of a 51.788 acre tract conveyed to John B. Webb in Volume 7002, Page 658-682 of the Official Public Records of Real Property of Bexar County, Texas, and continuing with the south line of said 927.064 acre tract for a total distance of 1636.13 feet to a found ½" iron rod;

N 49°15'20"W, a distance of 1274.99 feet to a found ½" iron rod at the northwest corner of said 51.788 acre tract, the northeast corner of a 1394.189 acre tract conveyed to Lumbermans Investment Corporation in Volume 5792, Page 1701-1709 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 50°51'38" W, 1276.71 feet;

N 50°09'55"W, a distance of 253.64 feet to a found 1/2" iron rod, by deed N 51°46'13"W, 246.49 feet;

N 54°11'40"W, a distance of 5267.86 feet to a found ½" iron rod in a 30" Live Oak, by deed N 55°47'33" W, 5276.83 feet;

N 54°16'26"W, a distance of 3325.13 feet to a found ½" iron rod at the southwest corner of the said 927.064 acres, the northwest corner of said 1394.189 acre tract, on the southeast line of a 1350.297 acre tract conveyed to the Poerner Family Partnership in Volume 4869, Page 292-312 of the Official Public Records of Real Property of Bexar County, Texas, by deed N 55°52'19" W, 3325.35 feet;

THENCE:

N 54°59'55"E, a distance of 2448.93 feet to a found ½" iron rod at the northwest corner of said 927.064 acre tract, by deed N 53°24'02" E, 2449.06 feet;

THENCE:

Continuing with the north line of said 927.064 acre tract the following calls and distances:

S 41°19'21"E, a distance of 1536.97 feet to a found ½" iron rod, by deed S 42°55'36" E, 1536.87 feet;

N 79°13'24"E, a distance of 849.81 feet to a found ½" iron rod, by deed N 77°37'30" E, 849.79 feet;

S 80°58'59"E, a distance of 1577.28 feet to a found ½" iron rod in 18" Cedar, by deed S 82°36'03" E, 1577.43 feet;

S 19°36'38"E, a distance of 238.56 feet to a found ½" iron rod in 17" Cedar, by deed S 21°16'00" E, 238.76 feet;

S 31°12'31"E, a distance of 408.74 feet to a found ½" iron rod in 20" Cedar, by deed S 32°46'48" E, 408.62 feet;

THENCE:

S 38°28'19"E, a distance of 513.61 feet to a found ½" iron rod at the north corner of a 7.312 acre tract conveyed to John L. and Mary H. McClung in Volume 6934, Page 826-829 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of that 40.955 acre tract out of said 927.064 acre tract conveyed to John O. Spice in Volume 6932, Page 279-286 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE:

Along and with the south line of said 40.955 acre tract the following calls and distances:

S 76°31'41"W, a distance of 408.43 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S74°57'31" W, 408.99 feet;

S 09°28'05"E, a distance of 244.99 feet to a found 1/2" iron rod, by deed S 11°10'57"E, 245.63 feet;

S 44°28'05"E, a distance of 310.27 feet to a found 1/2" iron rod, by deed S 46°10'57" E, a distance of 310.00 feet;

S 59°36'52"E, a distance of 289.82 feet to a found 1/2" iron rod, by deed S 61°10'57" E, 290.07 feet;

S 88°19'58"E, a distance of 1558.63 feet to a found ½" iron rod, by deed East 1558.42 feet;

S 66°02'47"E, a distance of 318.27 feet to a found ½" iron rod, by deed S 67°40'05" E, 318.43 feet;

S 88°18'36"E, a distance of 895.37 feet to a found 1/2" iron rod, by deed East, 894.76 feet;

N 74°47'26"E, a distance of 418.72 feet to a found ½" iron rod, bent, by deed N 73°10'20" E, 417.94 feet;

S 88°07'27"E, at 626 feet passing the centerline of the Cibolo Creek and continuing for a total distance of 954.80 feet to a found ½" iron rod at the southeast corner of said 40.955 acre tract, on the east line of said 927.064 acre tract:

THENCE:

Along and with the east line of said 927.064 acre tract the following calls and distances:

S 16°12'32"E, a distance of 527.73 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of said Cibolo Creek, by deed S 17°50'29" E;

THENCE:

S 63°21'01"E, a distance of 311.99 feet to a set ½" iron rod with cap marked "Pape-Dawson" on the northeast corner of the said E. Martin Survey, on the south line of the said W. H. Hughes Survey 478, from which a 60" Live Oak bears N 43°E, a distance of 32.6 feet (11 ¾ varas) called a double 20" Live Oak in the deed of 392.0 acres from Dierks to 4D Bar Ranch recorded in Document 98-06026868 of the Official Records of Comal County, by deed S63°15'29"E, 328.78 feet;

THENCE:

S 10°13'15"E, along and with the west line of said 392.0 acres, called as southerly line of the Joseph Thompson Survey 758, a distance of 2453.77 feet to a set ½" iron rod with cap marked "Pape-Dawson" in the centerline of the Cibolo Creek, the northeast corner of the aforementioned 99.900 acre tract, by deed S 11°45'29" E;

THENCE:

Along and with the north and west line of said 99.900 acre tract the following calls and distances:

S 79°50'41" W, a distance of 1149.13 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S78°14'31"W, 1150.73 feet;

S 08°48'58" W, a distance of 1577.45 feet to a set ½" iron rod with cap marked "Pape-Dawson", by deed S 07°12'48" W, 1577.45 feet;

THENCE:

S 24°18'58"W, a distance of 249.84 feet, by deed S 22°42'48" W, 250.00 feet, to the POINT OF BEGINNING and containing 785.4 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 19, 2000

JOB No.: 9988-00

DOC.ID.: N:\SURVEY00\0-10000\9988-00\9988-00.doc

TRACT FIVE

A 2.858 acre, or 124,493 square feet, more or less, tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W. M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 2.858 acre tract being more fully described as follows:

BEGINNING:

At a set ½" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center line Station 39+03.31, at the most southerly northeast corner of Parcel 12F, a 1.904 acre tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE:

Departing the west right-of-way line of Bulverde Road, along and with the east line of Parcel 12F the following bearings and distances;

S 87°28'16"W, a distance of 418.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 73°07'57"W, a distance of 151.84 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 30°12'08"W, a distance of 113.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 01°05'28"E, a distance of 97.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" at an angle point;

N 33°47'18"E, a distance of 229.50 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the west right-of-way line of said Bulverde Road;

THENCE:

Northeasterly, along and with the west right-of-way line of Bulverde Road, with a curve to the left, said curve having a radial bearing of N 55°47'04" E, a radius of 1088.00 feet, a central angle of 24°33'41", a chord bearing and distance of S 46°29'46" E, 462.84 feet and an arc length of 466.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 58°46'37"E, along and with the west right-of-way line of Bulverde Road, a distance of 181.34 feet to the POINT OF BEGINNING and containing 2.858 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

TRACT SIX

A 0.4893 acre, or 21,313 square feet, more or less tract of land being out of that 194.2434 acre tract recorded in Volume 3812, Pages 1580-1584 of the Official Public Records of Real Property of Bexar County, Texas, and being out of the W.M. Brisbin Survey No.89½, Abstract 54, County Block 4900 of Bexar County Texas. Said 0.4893 acre tract being more fully described as follows:

BEGINNING At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" in the west right-of-way line of

Bulverde Road, an 86-foot right-of-way, said iron rod located 43.00 feet left of Bulverde Road center

line Station 21+68.58 at the southeast corner of this tract;

THENCE: S 60°26'26"W, departing the west right-of-way line of Bulverde Road, a distance of 26.83 feet to a

set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the east line of Parcel 12D, a 0.769 acre

tract of land being a portion of the old right-of-way of Bulverde Road;

THENCE: Along and with the east line of Parcel 12D, the following bearings and distances;

N 32°32'25"W, a distance of 52.11 feet to a set ½" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 47°54'19"W, a distance of 128.87 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 27°44'21"W, a distance of 98.42 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" at an angle point;

N 04°41'26"W, a distance of 135.59 feet to a set 1/2" iron rod with a yellow cap marked "Pape-

Dawson" in the west right-of-way line of Bulverde Road;

THENCE: Southeasterly, along and with the west right-of-way line of Bulverde Road, along the arc of a curve

to the right, said curve having a radial bearing of \$49°42'58" W, a radius of 1227.00 feet, a central angle of 18°34'00", a chord bearing and distance of \$31°00'02" E, 395.87 feet, and an arc length of 397.61 feet to the POINT OF BEGINNING and containing 0.4893 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the

ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: July 17, 2001 JOB No.: 3538-17

DOC.ID.: F:\Data\3767 City of San Antonio\007 Cibolo Creek project\Annexation\Complete Documents\Services

Agreement 12-06-02 v2.wpd

EXHIBIT A-2 TO WAGE STANDARDS AGREEMENT

NON-CONTIGUOUS TRACT

A 258.1 acre, or 11,244,000 square foot tract of land out of W. W. Allen Survey No. 353, Abstract 34, County, Block 4866, the C. Vogel and F. Koch Survey No. 422, Abstract 984, County Block 4872; the Rompel, Koch & Voges Survey No. 1, Abstract 1020, County Block 4901, the Antonio Ruiz Survey No. 448, Abstract 638, County Block 4895, the J. W. Esther Survey No. 364, Abstract 219, County Block 4897, the E. Gonzalez Survey No. 441, Abstract 288, County Block 4902, the W. M. Brisbin Survey No. 89 ½, Abstract 54, County Block 4900, and the Charles Rompel Survey No. 448, Abstract 1089, County Block 4880, Bexar County, Texas, the same 258.1 acre tract described in conveyance to Michael A. Carabetta in Warranty Deed recorded in Volume 5352, Pages 500-504 of the Official Public Records of Real Property of Bexar County, Texas, said 258.1 acre being more particularly described by metes and bounds as follows:

BEGINNING: At a found 1/2" iron rod, said point being on the east right-of-way line of Smithson Valley Road,

right-of-way varies, the southeast corner of a called 4.9715 acre tract described in Volume 5535, Pages 1084-1085 of the Official Public Record of Real Property of Bexar County, Texas;

THENCE: Departing the east right-of-way line of said Smithson Valley Road, along and with the south line of said 4.9715 acre tract the following calls and distances:

N 80°22'30" E, a distance of 3053.24 feet to a found 1/2" iron rod;

N 80°22'20" E, a distance of 6664.34 feet to a found 1/2"iron rod;

N 80°32'09" E, a distance of 4387.96 feet to a set ½" iron rod with yellow cap marked "Pape Dawson"; and

N 83°34'30" E, a distance of 34.5 feet to the southeast corner of said 4.9715 acre tract, and continuing along and with the south line of a 1.898 acre tract described in Volume 6602, Pages 845-848 of the Official Public Records of Real Property of Bexar County, Texas, for a distance of 426.3 feet to the southeast corner of said 1.898 acre and continuing along and with the south line of a 14.843 acre tract described in Volume 5033, Page 1989-1992 of the Official Public Records of Real Property of Bexar County, Texas for a total distance of 1051.01 feet to a found ½" iron rod, the southeast corner of said 14.843 acre tract;

THENCE: N 11°00'02" E, along and with the east line of said 14.843 acre tract, a distance of 549.69 feet to a found ½" iron rod, the easterly northeast corner of said 14.843 acre tract on the south line of a 45.74 acre tract of land described in Volume 1906, Pages 1-6 of the Official Public Records of Real Property of Bexar County;

THENCE:

THENCE:

THENCE:

N 89°57'11" E, along and with the south line of said 45.74 acre tract of land, a distance of 541.06 feet to a found ½" iron rod;

N 03°33'04" W, along and with the east line of said 45.74 acre tract of land, a distance of 1580.54 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", an angle point on the west line of a 50 acre tract described in Volume 6471, Pages 284-290 of the Deed Records of Bexar County, Texas;

S 31°15'35" E, along and with the west line of said 50 acre tract, a distance of 2024.00 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", the southwest corner of said 50 acre tract;

THENCE:

Along and with the northeast corner of a 671.13 acre tract of land described in Volume 64, Page 621-623 of the Deed Records of Bexar County, Texas the following calls and distances:

S 71°15'21" W, a distance of 12.14 feet to a found 1/2" iron rod;

S 80°18'18" W, a distance of 10.61 feet to a found 1/2" iron rod;

S 75°51'52" W, a distance of 54.34 feet to a found 1/2" iron rod;

S 03°17'35" E, a distance of 87.63 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 62°13'40" E, a distance of 69.88 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", the northeast corner of a 613.30 acre tract of land described in Volume 4719, Pages 422-429 of the Deed Records of Bexar County, Texas;

THENCE:

Along and with the northwest line of said 613.30 acre tract of land the following calls and distances:

S 55°06'33" W, a distance of 1447.64 feet to a set ½" iron rod a with yellow cap marked "Pape-Dawson";

S 55°22'44" W, a distance of 290.63 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 55°05'33" W, a distance of 1414.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 55°05'18" W, a distance of 2874.22 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson":

THENCE:

Departing the northwest line of said 613.30 acre tract, along and with the northeast line of a 1350.297 acre tract described in Volume 4869, Pages 292-312 of the Official Public Records of Real Property of Bexar County, Texas

N 43°22'42" W, a distance of 275.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 57°35'24" W, a distance of 246.81 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 31°45'56" W, a distance of 756.76 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 19°43'56" W, a distance of 541.29 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 19°40'32" W, a distance of 213.89 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 81°30'06" W, a distance of 291.96 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 36°33'53" W, a distance of 140.19 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 81°24'04" W, a distance of 272.95 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 31°02'32" W, a distance of 204.10 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 30°04'50" W, a distance of 384.05 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 80°22'20" W, along and with the north line of said 1350.297 acre tract, a distance of 6684.18 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:

S 80°22'30" W, continuing along and with the north line of said 1350.297 acre tract a distance of 3074.17 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", on the east right-of-way line of said Smithson Valley Road;

THENCE:

N 09°36'02" E, along and with the east right-of-way line of said Smithson Valley Road, a distance of 63.54 feet to a the POINT OF BEGINNING and containing 258.1 acre in the City of San Antonio, Bexar County, Texas, said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE:

December 8, 2000

JOB No.:

1475-00

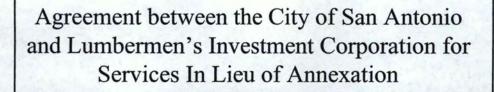
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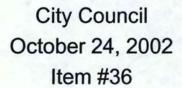
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EXHIBIT B

PGA EMPLOYEE POSITIONS

- 1. Service Specialist golf shop clerk
- 2. Fleet Manager general (non-mechanical) maintenance of golf carts
- 3. Merchandise Assistant golf shop staff
- 4. Tee Captain greeter/host at bag drop-off
- 5. Hospitality Team bag boys (valet and storage), cart scheduling, moving and storage
- 6. Tee Masters starters
- 7. Play Co-ordinators rangers/marshals
- 8. Range Tech Personnel golf ball retrieval
- 9. Set Up Personnel move tee markers, cut new holes, rope off areas for tournament play
- 10. Greens Keeper cuts grass, trims, rakes sand traps
- 11. Maintenance general labor
- 12. Deli Associate food/beverage sales clerk





Letter of Intent

On September 5, City Council approved a resolution in support of the Letter of Intent sent by Mayor Garza to the Professional Golfer's Association.



Annexation of LIC tracts

- On September 19, City Council approved a resolution to annex the LIC tracts.
- The annexation procedures comply with Chapter 43 of the Local Government Code.

3



Annexation of LIC tracts

- On September 25 and October 3, public hearings were held as required by Chapter 43.
- An inventory of services was completed and made available to the public.
- A proposed service plan for the area was completed and made available to the public.



LIC Opposes Three Year Annexation Plan

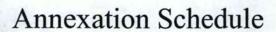
- On October 3, notified by LIC of their opposition to the three-year annexation plan.
- LIC requests that the City consider a services agreement in-lieu of annexation.
- On October 8, County Commissioners appoint five representatives.

5



LIC Representatives

- John Pierret, Executive Vice President
- Craig Knight, President
- Chuck Hudson, Vice President
- Gary Mc Atee, Senior Vice President
- Bobby Mann, Senior Vice President

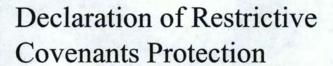


City will delay annexation of the Property for 15 years, commencing December 30, 2002, and ending December 30, 2017, unless proposed Services Agreement has been terminated.

7

Consent to Annexation

■ Lumbermen's consents to annexation when proposed Services Agreement has terminated.



- Includes terms of Golf Course
 Environment Management Plan.
- \$100K/year to SAWS for surface water and ground water monitoring for the 15 year term.

Geologic Assessment Committee

- Team to evaluate Property for sensitive features composed of :
 - Geologist selected by City Council
 - Geologist selected by Lumbermen's
 - Geologist selected by SAWS



Compliance Review Team

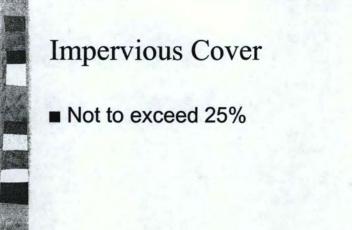
Allows for the appointment of individuals to assist City's Independent Auditor to review the performance of the parties and compliance with this Agreement.

11



Development Regulation

- All Property subject to the following:
 - Current Drainage, floodplain, aquifer protection
 - Current UDC, including prohibited uses on the Edwards Aquifer Recharge Zone
 - Current Tree Preservation Ordinance
 - Restricted covenants including
 - SAWS to approve all water pollution abatement plans required by TCEQ
 - · organic pesticides and fertilizers
 - buffering of all sensitive recharge features as approved by SAWS
 - · underground fuel storage tanks prohibited

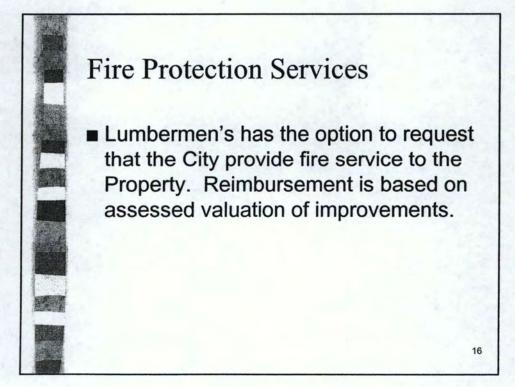


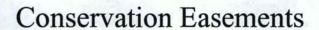
Golf Courses/Open Space

- Following the completion of two golf courses not less than 500 acres will be restricted for use as golf courses or open space.
- Following the completion of the third golf course the total amount of golf course and open space will be 800 acres.



- Open Space must be either;
 - contiguous to the golf course
 - if not contiguous to the golf course, at least 5 acres
 - or
 - be certified by the Texas Parks and Wildlife Dept as a wildlife area.

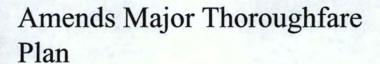




- No later than 5th year, conservation easements on a minimum of 700 acres on Edwards Aquifer Recharge Zone or Contributing Zone, not necessarily on the LIC tract. Each tract of land must be at least sixty-five acres.
- No part of the Golf Course Tracts or Open Space Area may be considered to meet this requirement.

No Political Subdivisions

■ No Public Improvement Districts, authorities or political subdivisions with power to tax or issue debt without the City's written consent can be established.

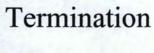


Deletes the roadway north of the eastwest arterial and changes north-south roadway south of Cibolo Canyon Blvd. from an arterial roadway to a connector roadway.

19

Vested Rights

Upon any termination of this Agreement prior to the completion of construction, Developer shall continue to have the benefit of prior permits.



- City can terminate if:
 - Two PGA golf courses are not operational by the 5th year
 - · Resort hotel is not operational by 5th year
 - Conservation easements have not been obtained by the 5th year
 - A termination event under the Golf Course Environmental Management Plan
 - Failure by Lumbermen's to make payment of \$100K/yr to SAWS
 - · Wage Standard is not followed
 - Any material breach of restrictive covenants filed of record on Property

Golf Course Environmental Management Plan

SAWS will monitor Environmental Management Plan.



Sensitivity Cost/Benefit Analysis

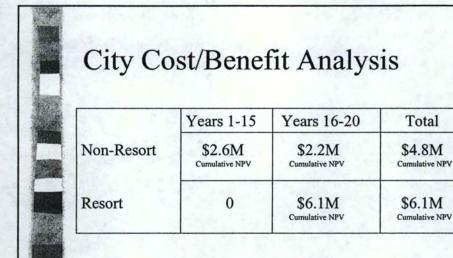
- Non-resort scenario assumes the following:
 - 140 homes/yr, average value \$250K
 - Assumes fire station in year 10
- Resort scenario assumes the following:
 - One hotel, two golf courses
 - 95 homes/yr., average value \$275K

23



Sensitivity Cost Benefit Analysis

- At year 20, the benefit to the City under the resort scenario is \$1.3M greater than the non-resort scenario, and that benefit continues to grow each year.
- Non-resort development will result in a present cumulative benefit by the City of \$4.8M five years following annexation.
- Resort development will result in a present value of \$6.1M.



Other Taxing Entity Benefits over 15 years ■ Bexar County \$12.1M (w/o flood)

- NEISD \$19.4M
- UHS \$9.3M
- ACCD \$4.1M
- Judson ISD \$48.4M
- River Authority \$0.6M

Estimates are absolute, not NPV



- The agreement requires the payment of the wage standard for all Hotel Employees and all non-tipped full-time PGA employees.
- Following the completion of the Hotel and a Skills Development Period each employer will compensate its Employees for a specified wage standard.

Wage Standard

- The Wage Standard will be determined by the hotel completion date:
 - prior to Oct.1, 2003 : \$8.75/hr
 - Oct. 1, 2003 Sept 30, 2004 : \$9.00/hr
 - Oct. 1, 2004 Sept 30, 2005 : \$9.25/hr
 - Oct. 1, 2005 Sept 30, 2006 : \$9.50/hr
 - Oct. 1, 2006 Sept 30, 2007 : \$9.75/hr
 - after Oct. 1, 2007 : \$10.00/hr



Wage Standard

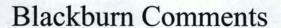
- Wage standard will apply following a ninety day skills development period.
- Employee benefits will be required for all full-time employees.
- Full-time employees are defined as those who work a minimum of 36 hours per week.

29



Blackburn Comments

Mr. Jim Blackburn has reviewed the Agreement and all attachments. Mr. Blackburn concluded that the proposed agreement is superior to developing 2800 acre property under the grandfathered provisions of the Aquifer Protection Ordinance.



Mr. Blackburn urges the City to follow through on the commitments to study and review the cumulative effects of development on the aquifer recharge zone and to commission further geological studies as recommended by the geological assessment commission.

31

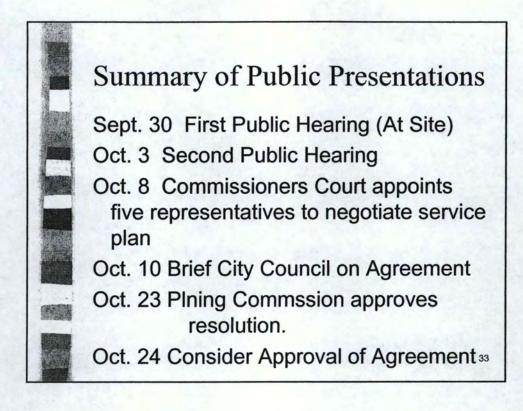
Summary of Public Presentations

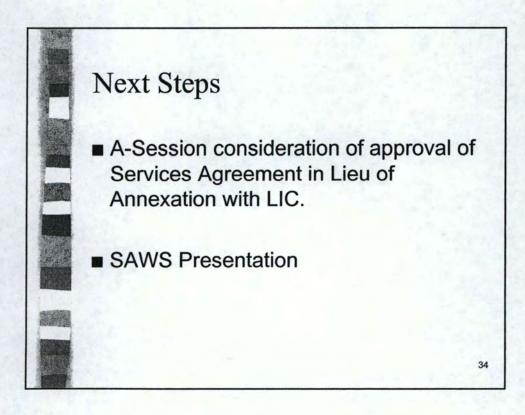
Sept. 5 - City Council resolution of support of Letter of Intent

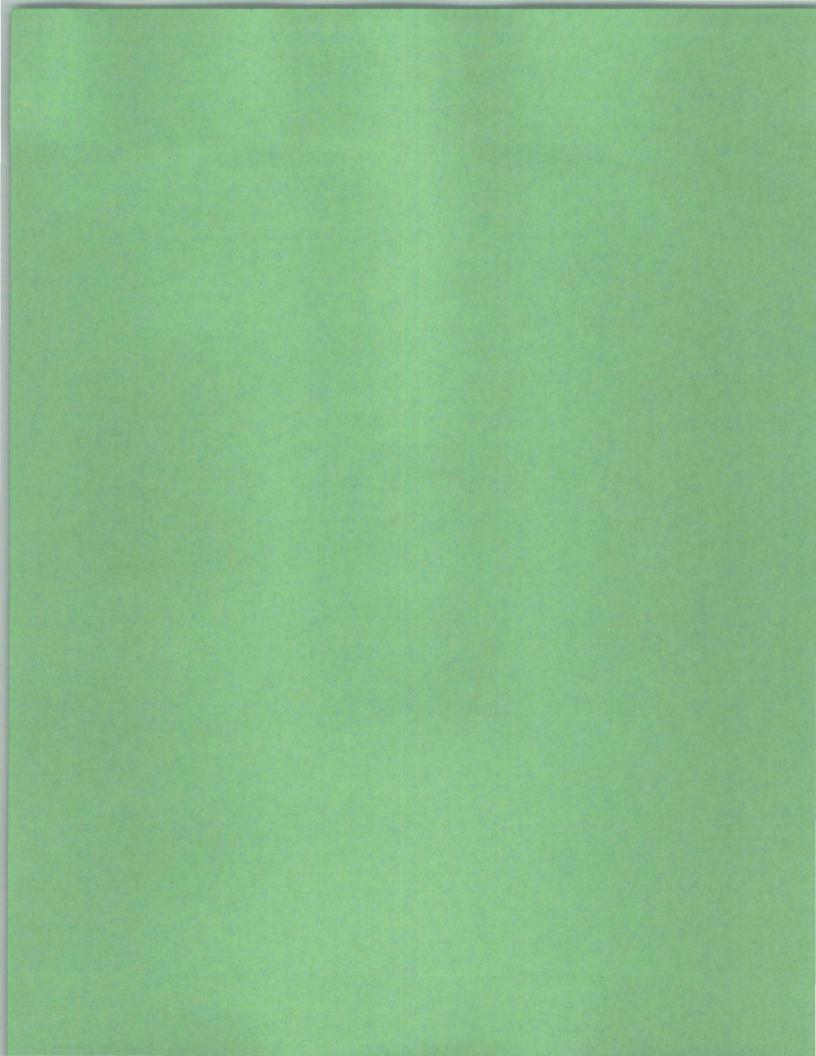
Sept.11 - Plning Comm. Considers Proposed Annexation Plan

Sept.19 - City Council Approval Annexation Plan

Sept. 20-24 Inventory and Service Plan are made available to the public







CITY OF SAN ANTONIO CITY ATTORNEY'S OFFICE INTERDEPARTMENTAL CORRESPONDENCE

TO: Councilman Julian Castro

FROM: Andrew Martin, City Attorney

COPIES TO: Mayor and City Council; Terry Brechtel, City Manager

SUBJECT: Texas Court Decisions Limiting Charter Referendum Powers

DATE: October 24, 2002

You have asked that I provide a written confirmation of my opinion that the referendum procedure established by Article IV of the San Antonio City Charter may not be used to force the repeal or a vote on the proposed ordinance approving a contract for provision of services in lieu of annexation under § 43.0563 of the Texas Local Government Code.

State annexation laws require the governing body of a city to conduct two public hearings before initiation of annexation.¹ After those hearings are held, "the municipality and the property owners of the area proposed for annexation shall negotiate for the provision of services to the area after annexation or for the provision of services to the area in lieu of annexation under Section 43.0563."

The significance of required public hearings before the adoption of an ordinance to approve a contract § 43.0563 stems from Texas court decisions that restrict the power of initiative and referendum. I've attached copies of the three illustrative cases I will cite.

San Pedro North, Ltd. v. City of San Antonio is the zoning case I have referred to in previous discussions of this area of the law. That case was a challenge to a zoning ordinance enacted by the city council. Relying on the procedures established by Article 11 of the San Antonio City Charter, opponents of the zoning ordinance collected and submitted a sufficient number of signatures on a petition seeking the repeal of the ordinance. The city council did not repeal the ordinance, and instead called an election for the voters to decide on repeal of the zoning ordinance. The vote was in favor of repeal. The affected landowner brought a lawsuit to challenge the repeal.

The court ruled that the zoning ordinance could not be repealed by a referendum:

¹ Texas Local Gov't Code, § 43.0561

² Texas Local Gov't Code, § 43.0562

In Bolton v. Sparks, 362 S.W.2d 946, 950 (Tex.1962), it was recognized that zoning ordinances and amendments to such ordinances are invalid where the mandatory provisions of the statutes concerning notice and hearing have been ignored, saying that the requirement of notice and hearing are intended for the protection of property owners against arbitrary action and that compliance with the mandatory provisions of the statutes is essential to the exercise of jurisdiction by municipal governing bodies and each act must be performed.

In City of Hitchcock v. Longmire, the plaintiffs had submitted a referendum petition to repeal an annexation ordinance. The court elaborated on the rule concerning public hearings as a prerequisite for the exercise of a city's jurisdiction to act:

The provisions of the general law requiring notice and hearing cannot be complied with if the ordinance is submitted to an election. For a hearing to be meaningful, it necessarily must be held before the body authorized to act in the matter.

In Vara v. City of Houston, the court ruled that Houston's citizens could not use the power of initiative to disannex territory. This case cited previous decisions on initiative and referendum powers, and held that the specific procedural requirements of state law to disannex territory withdrew a disannexation ordinance from the power of initiative.

These are but three cases that establish and discuss the general principle that when a public hearing is required by state law before a city can act, that action is removed from the power of referendum. This principle is the basis of my opinion and advice that a contract for the provision of services in lieu of annexation under § 43.0563 of the Texas Local Government Code is not subject to the referendum process established by the San Antonio City Charter.

Please let me know if you desire additional information on this issue.

Andrew Martin

Mohew Marth

City Attorney

LEXSEE 1978 Tex. App. LEXIS 2869

San Pedro North, Ltd., Appellant v. City of San Antonio et al., Appellees

No. 15828

Court of Civil Appeals of Texas, Fourth District, San Antonio

562 S.W.2d 260; 1978 Tex. App. LEXIS 2869

January 25, 1978

SUBSEQUENT HISTORY: [**1]

Rehearing Denied March 1, 1978.

PRIOR HISTORY:

Appeal from Bexar County.

COUNSEL:

Harvey L. Hardy, San Antonio, for appellant.

William H. Robison, George H. Spencer, Randolph P. Tower, Clemens, Spencer, Welmaker & Finck, San Antonio, for appellees.

OPINIONBY:

CADENA

OPINION:

[*261]

Plaintiff, San Pedro North, Ltd., a limited partnership, filed this suit seeking a declaration that an ordinance, initiated by petition of voters and adopted at an election, repealing an ordinance adopted by the City Council of the City of San Antonio permanently zoning land owned by plaintiff, was invalid. Defendants are the City of San Antonio and the members of its legislative body.

Plaintiff appeals from a judgment denying it the relief prayed for.

Plaintiff, engaged in the development of land, purchased the land in question in 1961. The land was annexed by the City in 1972, and under applicable ordinances the land immediately became zoned "Temporary R-1, One Family Residence District."

The City Code contemplates that after land has been annexed the City Planning Commission shall, on its own motion and as soon as practicable, assign appropriate "permanent" zoning classification to newly annexed [**2] land. The City Planning Commission did not see fit to initiate appropriate zoning proceedings for the land in question.

Plaintiff conveyed portions of the land in question and in 1975 the buyer successfully initiated proceedings to have the land purchased from plaintiff permanently zoned B-2 and B-3.

Subsequently, in the summer of 1975, plaintiff requested that his land be permanently zoned. The Planning Commission recommended that a portion of the land be permanently zoned B-2 and that the remainder be permanently zoned R-1.

On October 16, 1975, City's governing body adopted an ordinance assigning to plaintiff's land the permanent zoning classifications recommended by the City Planning Commission.

After the enactment of the October 16 ordinance, citizens' groups circulated petitions to repeal such ordinance and thus, in effect, to cause plaintiff's land to revert to its original temporary zoning.

On December 11, 1975, City's governing body certified the petitions as sufficient and, after a motion to repeal the October 16 ordinance was defeated, called an election for January 17, 1976, for the purpose of submitting the proposed repealing ordinance to the voters. At the election [**3] held on January 17, 1976, the vote was in favor of the repeal of the ordinance of October 16, 1975. The election results were canvassed by City's governing body and the result officially declared on January 19, 1976.

Article IV, § 35 of City's charter provides that the voters shall have the power to approve or reject at the polls "any ordinance passed by the council save one appropriating money, levying taxes, or fixing utility rates, or any ordinance submitted by the council of its own initiative to a vote of the electors." This section provides that "Within forty days after the enactment by the council of any ordinance which is subject to a referendum, a petition signed by qualified electors of a (sic) city equal in number to at least ten per cent of the electors qualified to vote at the last preceding regular election may be filed within the city clerk requesting that any such ordinance be either repealed or submitted to a vote of the electors."

Clearly, the above charter provision contains no language excluding zoning ordinances from its provisions.

Article I, § 3, Para. 9 of the Charter grants the power to the Council to regulate the zoning and use of land and expressly [**4] [*262] adopts the State Zoning Enabling Act (Articles 1011a to 1011j, Tex.Rev.Civ.Stat.Ann. (1963)).

Plaintiff contends that a zoning ordinance is not subject to the initiative and referendum provisions of City's charter. We agree.

At all times pertinent to this litigation, the power of Texas cities to zone was governed by the provisions of *Articles 1011a-1011m*, Tex.Rev.Civ.Stat.Ann. Pertinent provisions require a public hearing, following notice of at least 15 days, before regulations may be adopted or amended. Articles 1011d, 1011e.

Article 1011f requires the appointment of a Planning Commission to recommend the boundaries of the various zoning districts, and provides that the municipal legislative body shall take no action until it has received the final report of the Commission. This statute also requires written notice of all hearings before the Zoning Commission "on proposed changes."

There are no constitutional or statutory provisions relating to initiative and referendum, except for isolated statutory provisions for referendum with respect to certain subjects not here relevant. The Zoning Enabling Act contains no such provisions.

In Hancock v. Rouse, 437 S.W.2d [**5] 1, 4 (Tex.Civ.App. Houston (1st Dist.) 1969, writ refd n.r.e.), the Court said:

A zoning ordinance enacted by the City Council without the notice and hearing required by statute would be invalid and the power of the people to legislate directly is subject to the same limitations. ... Since notice and hearing are clearly required by the ... general

law of the State, as a prerequisite to the enactment of Zoning Ordinances, and since notice and hearing have no place in the process of legislating through initiative and referendum, the power of the people ... to legislate directly does not extend to the subject of zoning.

In Bolton v. Sparks, 362 S.W.2d 946, 950 (Tex.1962), it was recognized that zoning ordinances and amendments to such ordinances are invalid where the mandatory provisions of the statutes concerning notice and hearing have been ignored, saying that the requirement of notice and hearing are intended for the protection of property owners against arbitrary action and that compliance with the mandatory provisions of the statutes is essential to the exercise of jurisdiction by municipal governing bodies and each act must be performed.

To give effect to the election [**6] in this case, assuming that the result of the election was not a repeal of the zoning ordinance previously passed by the municipal legislative body, would be to add a procedural step to zoning which is not required by the comprehensive provisions of the Enabling Act. A city can no more add a step to the procedures required by state law than it can omit one. City of San Antonio v. Lanier, 542 S.W.2d 232 (Tex.Civ.App. San Antonio 1976, writ ref'd n.r.e.).

Our conclusion finds support in decisions from other jurisdictions. Forman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 516 P.2d 1234 (1973); Hurst v. City of Burlingame, 207 Cal. 134, 277 P. 308 (1929); cf. Township of Sparta v. Spillane, 125 N.J.Super. 519, 312 A.2d 154 (1973), where the decision that zoning ordinances are not subject to the initiative and referendum process was based on the necessity for continuity and expertise in zoning, rather than on the statutory requirements for notice and hearing. San Diego Building Contractors Ass'n v. City of San Diego, 13 Cal.3d 205, 118 Cal.Rptr. 146, 529 P.2d 570 (1974), is not in conflict with the conclusion we have reached, since in that case there was not statutory requirement [**7] of notice and hearing and the court was merely considering whether the constitutional requirements of due process were in themselves sufficient to invalidate the adoption of zoning ordinances without notice and hearing. The same is true of City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972), where the court concluded that the election campaign was sufficient notice and hearing insofar as the requirements of due process are concerned.

[*263] The judgment of the trial court is reversed and judgment is here rendered declaring that the election held on January 17, 1976 did not affect the validity of Ordinance No. 45863 adopted by the City Council of the

City of San Antonio on October, 16, 1975, and that such Ordinance No. 45863, assigning permanent zoning classification to plaintiff's land, is in full force and effect.

MURRAY, J., did not participate in the disposition of this case.

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San Pedro North, Ltd. v. San Antonio, 562 S.W.2d 260, 1978 Tex. App. LEXIS 2869 (Tex. Civ. App. San Antonio 1978)

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PRIOR HISTORY (0 citing references)

(CITATION YOU ENTERED):

San Pedro North, Ltd. v. San Antonio, 562 S.W.2d 260, 1978 Tex. App. LEXIS 2869 (Tex. Civ. App. San Antonio 1978){Analysis}

SUBSEQUENT APPELLATE HISTORY (4 citing references)

Writ of error refused no reversible error, (May. 31, 1978)

Rehearing of writ of error overruled, (Jul. 19, 1978)

Writ of certiorari denied:

San Antonio v. San Pedro North, Ltd., 439 U.S. 1004, 58 L. Ed. 2d 680, 99 S. Ct. 616, 1978 U.S. LEXIS 4139 (1978){Analysis}

Rehearing denied by:

San Antonio v. San Pedro North, Ltd., 439 U.S. 1135, 59 L. Ed. 2d 98, 99 S. Ct. 1060 (1979) [Analysis]

CITING DECISIONS (4 citing decisions)

TEXAS COURT OF CIVIL APPEALS

Cited by:

Hitchcock v. Longmire, 572 S.W.2d 122, 1978 Tex. App. LEXIS 3741 (Tex. Civ. App. Houston 1st Dist. 1978){Analysis}

Cited by:

572 S.W.2d 122 p.127

ARIZONA SUPREME COURT

Cited by:

Transamerica Title Ins. Co. Trust v. Tucson, 157 Ariz. 346, 757 P.2d 1055, 1988 Ariz. LEXIS 131, 12 Ariz. Adv. Rep. 3 (Ariz. 1988){Positive}

Cited by:

757 P.2d 1055 p.1059

IDAHO SUPREME COURT

Cited by:

Gumprecht v. Coeur D'Alene, 104 Idaho 615, 661 P.2d 1214, 1983 Ida. LEXIS 427 (Idaho 1983){Caution} Cited by: 661 P.2d 1214 p.1223

NEW MEXICO SUPREME COURT

Cited by:

Westgate Families v. County Clerk of Los Alamos, 100 N.M. 146, 667 P.2d 453, 1983 N.M. LEXIS 2358 (N.M. 1983){Analysis}

Cited by: 667 P.2d 453 p.455

ANNOTATED STATUTES (1 Citing Statute)

Tex. Local Gov't Code @ 211.007

LAW REVIEWS AND PERIODICALS (3 Citing References)

Cited by:

Zoning at the Ballot Box, 85 Nw. U.L. Rev. 519 (1991)

Cited by:

31 S. Tex. L. Rev. 1

Cited by:

31 S. Tex. L. Rev. 1 p.18

Cited by:

ARTICLE: REFERENDUM ZONING: LEGAL DOCTRINE AND PRACTICE, 53 U. Cin. L. Rev. 381 (1984)

ALR ANNOTATIONS (2 Citing Annotations)

Adoption of zoning ordinance or amendment thereto as subject of referendum, 72 A.L.R.3d 1030, supp sec. 6

Adoption of zoning ordinance or amendment thereto through initiative process, 72 A.L.R.3d 991, supp sec. 5

LEXSEE 1978 Tex. App. LEXIS 3741

City of Hitchcock, et al, Appellants v. Warren T. Longmire, Jr., et al, Appellees

No. 17196

Court of Civil Appeals of Texas, Houston (1st Dist.)

572 S.W.2d 122; 1978 Tex. App. LEXIS 3741

September 28, 1978

SUBSEQUENT HISTORY: [**1]

Rehearing Denied October 19, 1978.

PRIOR HISTORY:

Appeal from the District Court of Galveston County.

COUNSEL:

Barker, Lain, Schwab, Tullock & Blair, Elmo Schwab, Andrew Allen, Galveston, for appellants.

Zack H. Byrns, McConnico, Gregg & Kennamer, Dick H. Gregg, Jr., Robert M. Collie, City Atty., Charles M. Williams, Houston, for appellees.

OPINIONBY:

PEDEN

OPINION:

[*123]

The City of Hitchcock, a home rule city, appeals from a summary judgment in a municipal annexation case. Warren T. Longmire, Jr., and others brought this suit against the City, the four members of its city commission, and the city secretary (officially and individually) for a declaratory judgment to determine the validity of annexation Ordinance No. 308, for an injunction to prevent the City from exercising governmental control over the newly-annexed area, and for a writ of mandamus requiring the defendants to hold an election under the plaintiffs' referendum petition or to repeal the annexation ordinance. The [*124] trial court granted, successively, a temporary restraining order, a temporary injunction, and plaintiffs' motion for summary judgment. The summary judgment permanently enjoined

the defendants [**2] from exercising governmental control over the annexed territory (approximately 3.5 square miles) except for conducting municipal elections until the annexation ordinance is repealed or a referendum election is conducted. The court also ordered issuance of a writ of mandamus directing the defendants to repeal the annexation ordinance or to call, conduct, and canvass a referendum election. The validity of Ordinance No. 308 was not in issue before the trial court. Appellants' six points of error allege that the trial court erred:

- (1) In ordering a referendum election on an annexation ordinance;
- (2) In ordering the repeal of an annexation ordinance;
- (3) In granting a summary judgment because the evidence raised issues of fact;
 - (4) In overruling appellants' plea in abatement;
- (5) In granting a summary judgment to parties without proper standing; and
- (6) In granting summary judgment on improper evidence.

Notice of a public hearing on the proposed annexation was published and the hearing was held prior to the first reading of Ordinance No. 308 on November 11, 1977. The ordinance was published in a local newspaper again on November 16 [**3] and was passed on second reading on December 16. Plaintiffs presented a referendum petition to the city secretary on January 9, but on January 23, she refused to certify its sufficiency, and plaintiffs then brought this suit.

These provisions from Article XIII of the charter for the City of Hitchcock state the basis for the referendum and the proper procedure to be followed: Sec. 2. POWER OF REFERENDUM: The people of the City shall have the power to approve or reject in a referendum election any legislation which has been enacted by the Council and which would be subject to the initiative process, excepting that an ordinance authorizing the issuance of tax or revenue bonds which have been approved by the voters in an election duly held for that purpose shall not be subjected to such referendum.

Sec. 3. REQUIREMENTS OF PETITION FOR INITIATIVE OR REFERENDUM: Petitions ... for a referendum on legislation which has been enacted by the City Commission shall be signed by qualified voters of the City equal in number to at least twenty-five (25%) percent of all the qualified voters in the City ... (t)he petition for a referendum shall contain at least the full descriptive [**4] caption of the ordinance on which a referendum is asked and the date of its enactment by the Council. No signature to a petition shall be counted unless it is followed by the street address of the signer, is the same as the name of a voter appearing on the official current poll list, and has been personally signed by such voter. At the end of the petition there shall be a verification made by the person who has circulated the petition, sworn to before a Notary Public, that each signature appearing is the genuine signature of the person whose name purports to be signed to the petition, and was made in the presence of the person so verifying.

A petition ... for a referendum may consist of a number of separate petitions, which shall be counted together to determine the number of voters who have signed the petition, but each separate petition shall in that case fulfill all the requirements as to form and verification.

SEC. 4. TIME FOR FILING PETITIONS: ... A petition for a referendum on legislation which has been enacted by the City Commission may be filed prior to or within thirty (30) days after the effective date thereof asking that such legislation either [**5] be repealed or submitted to the vote of the people. When such a petition has been received and is certified to be sufficient by the City Secretary the legislation concerned shall not go into effect, or its operation shall be suspended, until and unless it is [*125] approved by the voters in an election as herein provided.

SEC. 5. PROCEDURE AFTER A PETITION IS RECEIVED: The petition ... for a referendum shall be filed with the City Secretary who shall within twenty (20) days thereafter determine whether the petition is sufficient in form and has been signed by the requisite number of qualified voters. If the petition is insufficient in form or signatures the City Secretary shall notify the person who has filed the petition of the reason therefor,

and an additional period of ten (10) days shall be allowed within which to file an amendment which will correct the deficiency.

A basic issue presented by appellants is whether citizens of a home rule city can repeal an annexation ordinance by referendum.

We noted in Hancock v. Rouse, 437 S.W.2d 1 (1969, writ ref'd n.r.e.):

"In Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1952) the court held:

"*** [**6] respondents being otherwise entitled to have the initiative election called and held, cannot be defeated in that right by the refusal of petitioners to perform purely ministerial duties on the ground that in their opinion the ordinance would be invalid if adopted.

But to entitle respondents to a writ of mandamus on the ground that they have a legal right to have the election called and held and that petitioners are under a legal duty to order and to hold it, it is not enough that the subject matter of the proposed ordinance be legislative in character but it must also appear that the subject matter of the ordinance has not been withdrawn from the field in which the initiatory process is operative.'

The Supreme Court recognized that the power of initiative and referendum is "the exercise by the people of a power reserved to them, and not the exercise of a right granted,' and that such a reservation of power in a city charter "should be liberally construed in favor of the power reserved.' But the court then said:

"Even so, the field in which the initiatory process is operative is not unlimited. *** Accordingly, city charters frequently expressly limit [**7] the right of initiative to legislative matters. But even though a charter contains no such express limitation *** the limitation is usually read into the charter by the court. *** The field where the initiatory process is operative may also be limited by general law. Article XI, Section 5 of our Constitution provides that no city charter shall contain any provision inconsistent with the general laws of this state. *** Again, the field may be limited by the city charter itself. Other provisions of the charter may withdraw from the people the power under the initiative provisions to deal with a particular subject. limitation by the general law or by the charter of the field in which the initiatory process is operative may be either an express limitation or one arising by implication. Such a limitation will not be implied, however, unless the provisions of the general law or of the charter are clear and compelling to that end.

"In all the Texas cases called to our attention in which it has been held that the people of a municipality could not validly exercise a delegated legislative power through initiative proceedings, it will be found that authority to act [**8] was expressly conferred upon the municipal governing body exclusively, or there was some preliminary duty such as the holding of hearings, etc., impossible of performance by the people in an initiative proceeding, by statute or charter made a prerequisite to the exercise of the legislative power. Into this class fall the cases of McCutcheon v. Wozencraft, 116 Tex. 440, 294 S.W. 1105; Southwestern Telegraph & Telephone Co. v. City of Dallas, 104 Tex. 114, 134 S.W. 321: Lindsley v. Dallas Consolidated St. Ry. Co., Tex. Civ. App., 200 S.W. 207; Dallas Ry. Co. v. Geller, 114 Tex. 484, 271 S.W. 1106; Denman v. Quin, Tex. Civ. App., 116 S. W. 2d 783 (writ ref'd.).' "

[*126] A case illustrating the rule that general laws may limit the field where initiative and referendum are operative is City of San Antonio v. State ex rel. Criner, 270 S.W.2d 460 (Tex.Civ.App.1954, writ refd.). In that case the City of San Antonio was not permitted to detach 65 square miles of improved territory because the ordinance it passed was not in compliance with Article 1266, V.T.C.S., a statute then providing for the detachment of unimproved areas in cities of 150,000 or more. Although Article 1266 [**9] was stated in the positive: i. e., under certain circumstances a city May discontinue such unimproved territory as a part of the city, the court stated that to meet the problems encountered by cities "the Legislature enacts various laws which it deems appropriate to cities of a given size. Article 1266 is one of these laws. It applies to the four largest cities in Texas and provides that they May not detach territory unless it exceeds three acres in size and is unimproved." (emphasis added). The court then pointed out that general law cities could detach under Article 973 if there are at least 10 acres which were uninhabited as defined in such statute. Apparently the Criner holding is based on a conclusion that the field of disannexation of territory by municipalities has been limited by general law. Under Article 1266 as amended, the territory now subject to being discontinued by a city is limited to that which is unimproved or is non-taxable to the city. It is not applicable to our case.

Similarly, the provisions of Article 974, which are expressly noticed in the City Charter of Hitchcock, do not apply to the facts in this case. Article 974 permits certain qualified inhabitants [**10] of territories adjoining the city to vote to join the city and to then ask the city council to pass an ordinance receiving them as part of the city.

The general laws of Texas which may limit the field where initiative and referendum are operative are Article 970a, the Texas Municipal Annexation Act, and Article 1175, which enumerates the general powers of home rule cities.

The provisions of Article 1175 concerning the powers of home rule cities to annex or disannex territory are in Section 2 of that statute:

The power to fix boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, to provide for the disannexation of territory within such city ... according to such rules as may be provided by said charter not inconsistent with the procedural rules prescribed by the Municipal Annexation Act.

Article 970a, the Municipal Annexation Act, contains comprehensive provisions for the annexation and disannexation of territory by both home rule and general law cities. Sec. 6 of the Act specifically requires that before any city may institute annexation proceedings, it must provide within [**11] specified time limits public hearings and notice of such hearings.

In Hancock v. Rouse, supra, the plaintiffs sought mandamus to require the Bellaire City Council to submit to election a zoning ordinance proposed by an initiative petition and four zoning ordinances previously enacted. It was noted that the statutes governing power of Texas cities to zone, Article 1011a-1011j, V.T.C.S., had been adopted and made part of the Bellaire City Charter and that they require notice and a public hearing before zoning regulations may be adopted or amended. The provisions of the general law requiring notice and hearing cannot be complied with if the ordinance is submitted to an election. For a hearing to be meaningful, it necessarily must be held before the body authorized to act in the matter. A zoning ordinance enacted by the city council without the notice and hearing required by statute would be invalid, and the power of the people to legislate directly is subject to the same limitations. We held that since notice and hearing are clearly required by the Charter and by the general laws of the State as a prerequisite to the enactment of zoning ordinances, and since notice and hearing [**12] have no place in the process of legislating through initiative and [*127] referendum, the power of the people of Bellaire to legislate directly does not extend to the subject of zoning. 437 S.W.2d at p. 4.

In the recent zoning case of San Pedro North, Ltd. v. City of San Antonio, 562 S.W.2d 260 (Tex.Civ.App.1978, writ ref'd n.r.e.), notice and hearing requirements of the general laws of the State concerning zoning were noted. The court held that to give effect to the referendum election in that zoning case, "assuming that the result of the election was not a repeal of the zoning ordinance previously passed by the municipal legislative body.

would be to add a procedural step to zoning which is not required by the comprehensive provisions of the Enabling Act. A city can no more add a step to the procedures required by state law than it can omit one."

We consider our case to be analogous to the San Pedro North case; the adding of a referendum would be the adding of a procedural step not required by the comprehensive provisions of the Municipal Annexation Act.

Since the annexed territory becomes a part of the city on the enactment of the annexation ordinance, the repeal of [**13] such ordinance by referendum might be viewed as a means of disannexation.

The methods of disannexing territory are specific and limited. The general law, set out in Section 10 of the Municipal Annexation Act, provides procedural rules for disannexing a validly annexed area. If the annexing city fails to provide equivalent city services to the annexed area within three years of the effective date of annexation, a majority of the qualified voters residing in the annexed area and the owners of 50% Or more of the land in such area may petition the governing body of the city for disannexation. Prior to the circulation of the petition, notice of it must be posted in three places and published in a newspaper of general circulation in the annexed area. If, after the proper procedure is followed, the governing body fails or refuses to disannex, anyone signing the petition may file suit in district court and upon the proper proof may obtain an order disannexing the area. This appeal is directly to the courts, not to the elective process; the disannexation procedure is quasi-judicial rather than legislative.

The appellees have not sought to use the only specific means for discontinuance [**14] of territory provided by the Hitchcock City Charter, Article I, Section 5. It applies when there exists within the corporate limits any territory not suitable or necessary for city purposes; if it is inhabited, it can be disannexed by ordinance passed by the city Commission after the Commission has received a petition signed by a majority of the qualified voters in the territory to be disannexed.

There can be no right or power existing in the people of a city to adopt an ordinance through the initiative process if the power to adopt it is not lodged in the city council in the first instance. Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645, 651 (1951). Under Articles 970a and 1175(2), the governing body of the city does not have the right to repeal an annexation ordinance or to adopt a disannexation ordinance without following the specific procedural requirements established in Art. 970a; a popular referendum would be subject to the same limitation.

Having sustained the appellant's first [**15] two points of error, we do not reach its others.

The judgment of the trial court is reversed, the injunction is dissolved, and judgment is rendered that the plaintiffs take nothing.

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Hitchcock v. Longmire, 572 S.W.2d 122, 1978 Tex. App. LEXIS 3741 (Tex. Civ. App. Houston 1st Dist. 1978)

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Hitchcock v. Longmire, 572 S.W.2d 122, 1978 Tex. App. LEXIS 3741 (Tex. Civ. App. Houston 1st Dist. 1978) [Analysis]

SUBSEQUENT APPELLATE HISTORY (2 citing references)

Writ of error refused no reversible error, (Jan. 10, 1979)

Rehearing of writ of error overruled, (Feb. 14, 1979)

CITING DECISIONS (2 citing decisions)

TEXAS COURT OF APPEALS

Cited by:

Houston v. Savely, 708 S.W.2d 879, 1986 Tex. App. LEXIS 12181 (Tex. App. Houston 1st Dist. 1986) {Positive} Cited by:
708 S.W.2d 879 p.884

TEXAS COURT OF CIVIL APPEALS

Explained by:

Vara v. Houston, 583 S.W.2d 935, 1979 Tex. App. LEXIS 3810 (Tex. Civ. App. Houston 14th Dist. 1979){Analysis} Explained by: 583 S.W.2d 935 p.938

ANNOTATED STATUTES (1 Citing Statute)

Tex. Local Gov't Code @, 43.052

LAW REVIEWS AND PERIODICALS (1 Citing Reference)

Cited by:

34 Sw. L.J. 453

Cited by:

34 Sw. L.J. 453 p.470

LEXSEE 1979 Tex. App. LEXIS 3810

Rudolph C. Vara, et al, Appellants v. The City of Houston, et al, Appellees

No. B2007

Court of Civil Appeals of Texas, Fourteenth District, Houston

583 S.W.2d 935; 1979 Tex. App. LEXIS 3810

June 20, 1979

SUBSEQUENT HISTORY:

Rehearing Denied July 11, 1979.

PRIOR HISTORY:

Appeal from 190th District Court of Harris County

COUNSEL:

Thomas W. Leonard, Leonard, Koehn, Rose, Webb & Hurt, Bellaire, for appellants.

Robert M. Collie, Jr., City Atty., Charles M. Williams, Asst. City Atty., Houston, for appellees.

JUDGES:

Before J. CURTISS BROWN, C. J., and COULSON and CIRE, JJ.

OPINIONBY:

BROWN

OPINION:

[*936]

Rudolph C. Vara and seven other named plaintiffs (appellants) brought this class action on behalf of approximately 55,000 residents of the City of Houston (the City), all of whom had signed a petition to initiate a city ordinance to disannex a portion of the City referred to as the Clear Lake City area. Appellants sought a writ of mandamus to compel the City, its mayor, city council, and secretary (appellees) to either pass the disannexation ordinance without alteration or to submit the proposal to the electorate. The trial court, after a hearing, denied the writ.

The charter of the City provides that "(t)he people of Houston ... shall have the power of direct legislation by the initiative and referendum." Charter, Houston, art. VIIb § 3. With regard to the use of the initiative, the charter reads [**2] as follows:

The initiative shall be exercised in the following manner:

- (a) Petition. A petition signed and verified in the manner and form required for recall petition in Article VIa* by qualified electors equal to 15 per cent of the total vote cast at the democratic primary for the nomination of mayor and commissioners, next preceding the filing of said petition, accompanied by the proposed legislation or measure in the form of a proposed ordinance or resolution, and requesting that such ordinance or resolution be submitted to a vote of the people, if not passed by the council, shall be filed with the secretary.
- (b) Secretary's certificate. Within five days after the filing of such petition the secretary shall certify the number of votes cast at the democratic primary for nomination of mayor and commissioners, next preceding the filing of said petition, and the number of signers of such petition, and shall present said certificate, petition and proposed ordinance or resolution to the council.

[*937] (c) Action by the council upon petition. If such petition be signed, as in the Charter provided, by qualified electors equal to 15 per cent of [**3] the total vote cast at the democratic primary for the nomination of mayor and commissioners next preceding the filing of such petition, the council, within ten days after the receipt thereof, except as otherwise provided in this Charter, shall either pass such ordinance or resolution without alteration, or submit it to the popular vote at a special election, which must be held within thirty days after the date of the ordering thereof; provided, however,

that if any other municipal election is to be held within sixty days after the filing of the petition said proposed ordinance or resolution shall be submitted without alteration to be voted upon at such election.

The parties have stipulated that appellants have complied with all procedural requirements for exercise of the initiative process under the charter. The parties also stipulated that the appellees refused, and continue to refuse, to pass the ordinance or to order an election.

The Texas Supreme Court has outlined the standard of review to be applied in determining whether mandamus should issue to compel a city to take action on an initiative petition. In Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1951), the respondents, [**4] signers on an initiative petition, were seeking a writ of mandamus to compel petitioners, the city council, the city manager, and the city clerk of the City of Austin, to hold an election on a proposed ordinance classifying policemen and firemen. The court held that

to entitle respondents to a writ of mandamus on the ground that they have a legal right to have the election called and held and that petitioners are under a legal duty to hold it, it is not enough that the subject matter of the proposed ordinance be legislative in character But it must also appear that the subject matter of the ordinance has not been withdrawn from the field in which the initiatory process is operative.

Id. at 648 (emphasis added). In determining whether the subject matter of the proposed ordinance in Glass had been withdrawn from the scope of the initiatory process, the supreme court posed this question: "Has the subject matter of the proposed ordinance been withdrawn, Expressly or by necessary implication, by either the general law or the City Charter from the field in which the initiatory process is operative?" Id. at 650 (emphasis added). Neither the appellants nor the appellees in [**5] the case at bar contend that any provision of the City Charter either expressly or by necessary implication withdraws the subject matter of the proposed ordinance from the scope of the initiatory process. Thus the issue is narrowed to whether some provision or provisions of the general laws removes from the initiatory process the proposed ordinance to disannex the Clear Lake City area.

Article 1175, Tex.Rev.Civ.Stat.Ann. (1963), sets forth the enumerated powers of a home rule city, such as the City of Houston, and provides in relevant part as follows:

Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty ...

2. The power to ... provide for the disannexation of territory within such city ... according to such rules as may be provided by said charter Not inconsistent with the procedural rules prescribed by the Municipal Annexation Act.

Tex.Rev.Civ.Stat.Ann. art. 1175(2) (1963) (emphasis added). Pursuant to article 1175(2) the city would be empowered to provide in its charter for disannexation [**6] of territory within the procedural limitations of the Municipal Annexation Act. However, the Houston City Charter, which contains [*938] no rules pertaining specifically to disannexation, provides as follows:

The city shall have all powers that are or hereafter may be granted to municipalities by the Constitution or laws of Texas; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the counsel.

In addition to all the powers enumerated in this Charter, implied thereby or appropriate to the exercise thereof, The city shall have and may exercise, in the manner hereinbefore provided, all other powers which, under the Constitution and laws of this State, it would have been competent for this Charter specifically to enumerate.

Charter, Houston, art. II § 2(b) (emphasis added). Appellants contend that the broad reservation of power in the above section is a sufficient "rule" for the purposes of article 1175(2). On the basis of Golston v. City of Tyler, 262 S.W.2d 518 (Tex.Civ.App. Texarkana [**7] 1953, writ ref'd), we agree. Nevertheless, the further restriction in article 1175(2) that the "rules" must be consistent with the procedures in the Municipal Annexation Act must be given effect.

The Municipal Annexation Act is embodied in article 970a, Tex.Rev.Civ.Stat.Ann. (1963). Specifically as to disannexation, the act provides the following procedural requirements. If the annexing city fails to discharge its obligation to provide equivalent city services to the annexed area within three years of the date of annexation, a majority of the qualified voters residing in the annexed area and the owners of fifty percent of the land in the area may petition for disannexation. The statute requires notice of the petition to be posted for ten days in three public places in the annexed area and publication in a generally circulated newspaper serving the area prior to distribution of the

petition for signatures. If the city fails to disannex within ninety days after receipt of a valid petition, any one or more of the petitioners may file in the district court for disannexation. If the district court then determines that the petition is valid, "it shall enter an order disannexing such [**8] particular annexed area." Tex.Rev.Civ.Stat.Ann. art. 970a § 10 A and B (1963).

The relationship between article 1175(2) and article 970a § 10 was the subject of City of Hitchcock v. Longmire, 572 S.W.2d 122 (Tex.Civ.App. Houston (1st Dist.) 1978, writ ref'd n.r.e.). In that case the issue as expressed by the court was "whether citizens of a home rule city can repeal an annexation ordinance by referendum." The court reasoned that repeal of an annexation ordinance is substantially the same as disannexation of territory and held that "the governing body of the city does not have the right to repeal an annexation ordinance or to adopt a disannexation ordinance without following the specific procedural requirements established in article 970a." Id. at 127. We conclude that articles 1175 and 970a § withdrawn the subject matter of this ordinance, disannexation, from the field in which the initiatory process is operative.

Alternatively, appellants contend that at least a portion of the territory was subject to "discontinuance" through the initiative process pursuant to article 1266,

Tex.Rev.Civ.Stat.Ann. (1963). That article provides for disannexation of territory by city [**9] ordinance if the territory is unimproved, of a minimum acreage, and is "contiguous and adjoining the lines of (the) city." In this case the parties stipulated that the Clear Lake City area was composed of both improved and unimproved property. There was no such stipulation as to the size of the unimproved area or as to the adjacency of the tract to the city lines. Nor did appellants present any evidence on those issues so as to bring any portion of the territory within the requirements of article 1266.

Having found that disannexation, generally, has been withdrawn from the initiatory [*939] process, and having found appellants failed to comply with either article 970a or article 1266, we overrule appellants' first point of error. This renders it unnecessary for us to consider appellants' second point of error which complains that the trial court erroneously ruled that the boundary description of the area to be disannexed in the proposed ordinance fails to close.

The judgment of the trial court denying the writ of mandamus is affirmed.

Affirmed.

CIRE, J., not participating.

Copyright 2002 SHEPARD'S - 8 Citing references

Vara v. Houston, 583 S.W.2d 935, 1979 Tex. App. LEXIS 3810 (Tex. Civ. App. Houston 14th Dist. 1979)

SHEPARD'S(R) Signal: Citing Refs. With Analysis Available

Restrictions: Unrestricted

FOCUS(TM) Terms: No FOCUS terms

Print Format: FULL

Citing Ref. Signal Legend:

{Positive} -- positive treatment indicated {Caution} -- possible negative treatment {Warning} -- negative treatment indicated {Cited} -- citation information available

{Analysis} -- cited and neutral analysis indicated

PRIOR HISTORY (0 citing references)

(CITATION YOU ENTERED):

Vara v. Houston, 583 S.W.2d 935, 1979 Tex. App. LEXIS 3810 (Tex. Civ. App. Houston 14th Dist. 1979) [Analysis]

SUBSEQUENT APPELLATE HISTORY (3 citing references)

Writ of error refused no reversible error, (Feb. 6, 1980)

Rehearing of writ of error overruled, (Mar. 12, 1980)

Appeal dismissed by:

Vara v. Houston, 449 U.S. 807, 66 L. Ed. 2d 11, 101 S. Ct. 54, 1980 U.S. LEXIS 2568, 49 U.S.L.W. 3243 (1980){Analysis}

CITING DECISIONS (2 citing decisions)

TEXAS COURT OF APPEALS

Cited by:

Austin v. Save Our Springs Coalition, 828 S.W.2d 340, 1992 Tex. App. LEXIS 955 (Tex. App. Austin 1992) {Analysis} Cited by:
828 S.W.2d 340 p.343

Cited by:

Willow Park v. Bryant, 763 S.W.2d 506, 1988 Tex. App. LEXIS 3385 (Tex. App. Fort Worth 1988) {Caution} Cited by: 763 S.W.2d 506 p.510

ANNOTATED STATUTES (2 Citing Statutes)

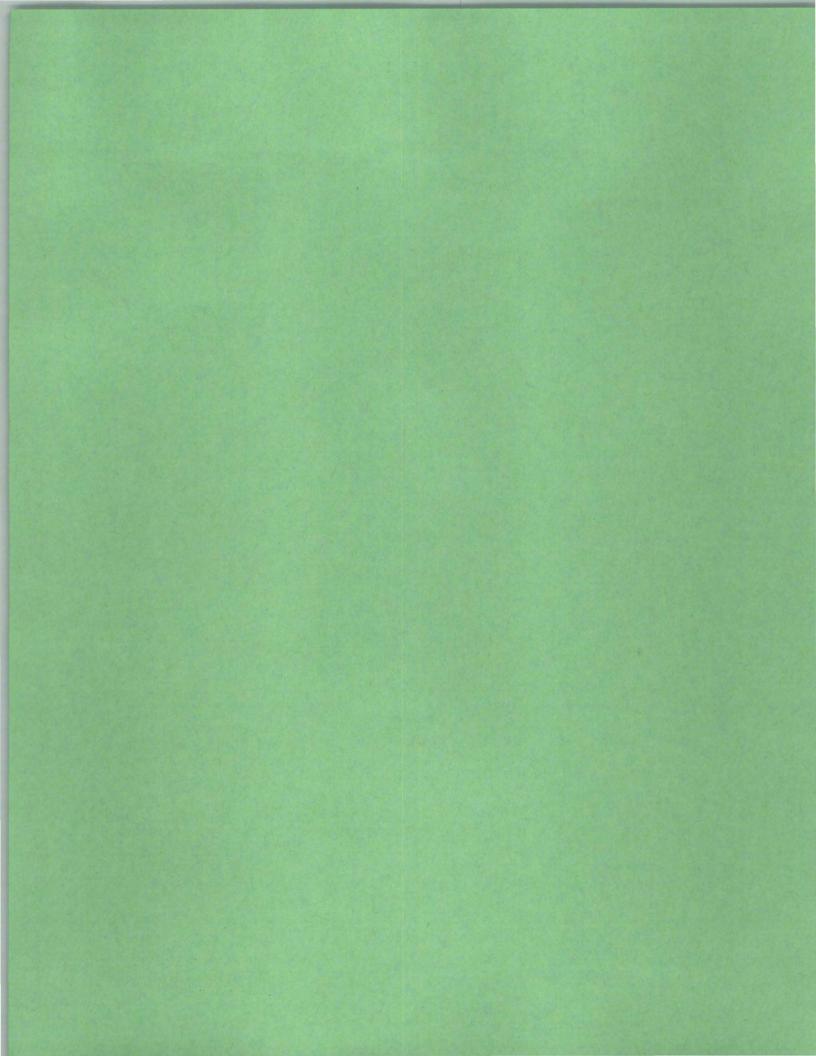
Tex. Local Gov't Code @ 43.021

Tex. Local Gov't Code @ 43.033

LAW REVIEWS AND PERIODICALS (1 Citing Reference)

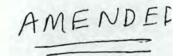
Cited by:

34 Sw. L.J. 453 **Cited by:** 34 Sw. L.J. 453 p.470



AMENDED/UPDATED 10/24/02

City of San Antonio **Discretionary Contracts Disclosure***



For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient. State"Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1 before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

For the Charter a	purpose of assisting and the code of ethic city is required to dis	the city in the es, an individual or	nforcement of probusiness entity se	eking a discretio	nary contract
	gohn Pierres Charles Heid				
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, bı	ny individual or busin usiness entity of a iscretionally contract;	ny individual or le			
Temple	e-Inland, Inc. (see a	attached list of subs	sidiaries – Exhibit	"A")	
discre	dentity of any <i>lobbyi</i> etionary contract bei to the discretionary o	ng sought by any	5 5 n/s	是 1000 1000 1000 1000 1000 1000 1000 10	第一条
Guerra D Akin Gum	& Associates, Inc. DeBerry Coody onp Strauss, Hauer & wson Engineers, Inc.				
1 A busines	ss entity means a sole pro	pprietorship, partnershi	p, firm, corporation, h	olding company, joint	-stock

company, receivership, trust, unincorporated association, or any other entity recognized by law.

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above indirect contributions by an individual include but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include but are not limited to, contributions made through the officers owners, attorneys, or registered lobbyists of the entity.

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which reasonably understood, raise a question as to whether any city official or employee would violate Section 1 of Part B. Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature:

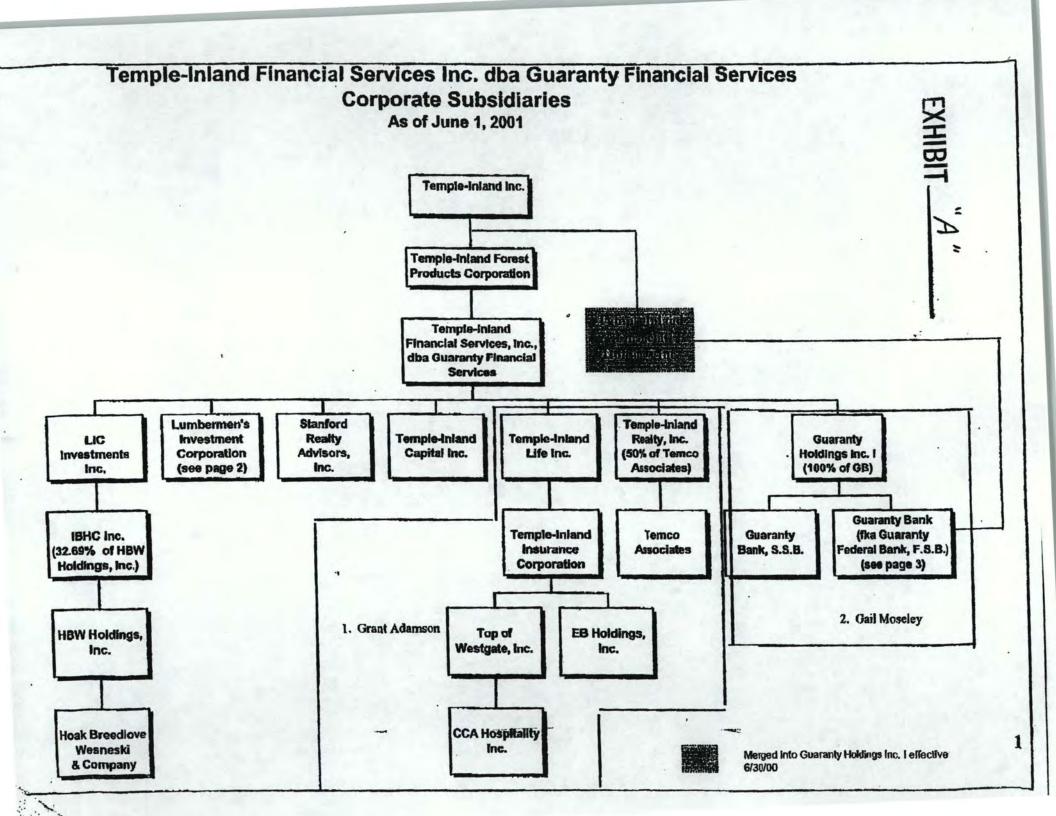
Title: Executive Vice President

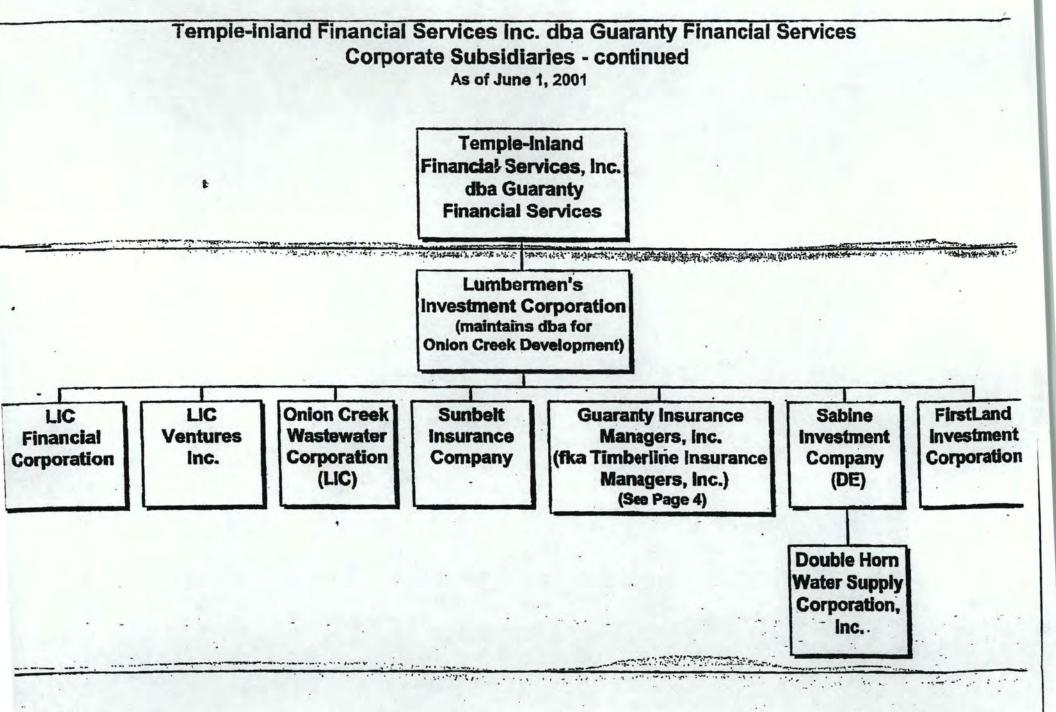
Date:

Company: Lumbermen's Investment Corporation

10/24/2

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.





Guaranty Insurance Managers, Inc. As ofJune 1, 2001 Temple-Inland Financial Services, Inc. dba Guaranty Financial Services Lumbermen's Investment Corporation **Guaranty Insurance** Managers, Inc. (fka Timberline Insurance Managers, Inc.) Guaranty * **Guaranty Insurance** The Associates, Inc. Services, Inc. Insurance Premium (fka Timberline Marketplace (fka Timberline Insurance Services, Inc.) Acceptance Corporation Inc. Associates, Inc.) Insurance Marketplace Agency, Inc. * Due to state insurance law requirements, stock of GAI is nominally held by Harold L. Shults, Jr. ** Due to state insurance law requirements, stock of GISI is nominally held

by Harold L. Shults, Jr. and C.M. Nick Grant, II

LAW OFFICES OF

KAUFMAN & ASSOCIATES, INC.

1250 Frost Bank Tower 100 West Houston Street

SAN ANTONIO, TEXAS 78205-1457 TELE: (210) 227-2000 FAX: (210) 227-2001 www.kaufmanassoc.com

REVISED/UPDATED October 24, 2002

Political contributions of more than \$100 made during the previous twenty-four months to Council members and political action committees.

William	I Ka	HEMAN
William	I. Na	uman

October 2000	Raul Prado	\$1000
October 2000	Debra Guerrero	\$250
February 2001	John Sanders	\$1000
March 2001	Carroll Schubert	\$1000
March 2001	Antoinette Moorhouse	\$250
March 2001	David Carpenter	\$1500
March 2001	Kike Martin	\$150
March 2001	Enrique Barrera	\$1500
April 2001	Bobby Perez	\$1500
April 2001	David Garcia	\$1500
April 2001	Mario Salas	\$1000
October 2001	Enrique Martin	\$1000
October 2001	Raul Prado	\$1000
December 2001	David Garcia	\$250
January 2002	John Sanders	\$1000
January 2002	David Carpenter	\$1000
January 2002	Toni Moorhouse	\$1000
February 2002	Raul Prado	\$250
		\$1000
February 2002	Bobby Perez	20.00
March 2002	David Carpenter	\$1000
March 2002	Antoinette Moorhouse	\$1000
April 2002	Kike Martin Campaign David Garcia	\$1000
April 2002		\$1000
June 2002	Enrique Barrera	\$1000
July 2002	Carroll Schubert	\$1000
July 2002	Josh Copeland	\$1000
September 2002	Thomas Aguillon	\$1000

Kaufman & Associates, Inc.

July 2000	David Garcia (in-kind)	\$186.45
December 2000	Bobby Perez	\$1500
January 2001	Enrique Martin (in-kind)	\$205.31
January 2001	Enrique Martin	\$1000.00



EXHIBIT "C"

April 10, 2002

DISCRETIONARY CONTRACT ETHICS STATEMENT PAPE-DAWSON ENGINEERS, INC.

Political contributions of more than \$100 made during the previous twenty-four months to Council members and political action committees.

Eugene H. Dawson, Jr.

May 2000	Bobby Perez	\$500
Nov. 2000	David Carpenter	\$500
Dec. 2000	Bonnie Conner	\$500
Dec. 2000	Bobby Perez	\$500
Jan. 2001	Enrique Martin	\$500
Jan. 2001	John Sanders	\$500
Mar. 2001	Carroll Schubert	\$500
Mar. 2001	Enrique Barrera	\$500
July 2001	CEC-PAC	\$580
Dec. 2001	David Garcia	\$500
Jan. 2002	David Garcia	\$500

Samuel G. Dawson

Nov. 2000	David Carpenter	\$500
Dec. 2000	Bonnie Conner	\$500
Dec. 2000	Bobby Perez	\$250
Jan. 2001	David Garcia	\$300
Mar 2001	Carroll Schubert	\$500

John Rinehart

Feb.	2001	John Sanders	\$100

Discretionary Contract Ethics Statement Pape-Dawson Engineers, Inc. Page 2 of 2

Ruben C. Cervantes

Dec. 2000	Bobby Perez	\$250
May 2001	Antoniette Moorhouse	\$250
Sept. 2001	Enrique Martin	\$250

Rick Wood

May 2001	Antoniette Moorhouse	\$250
May 2001	Alltomette Moornouse	Ψ250

Officers

16 0001	Consulting Engineers	¢1 000
Mar. 2001	Consulting Engineers	\$1,900
	Council of Texas-PAC	
Various	Candidates and Previous	\$7,750
	Council Not Holding	
	Office	

Pape-Dawson Engineers, Inc.

Wayne Brasington Chief Financial Officer

ethicsord.doc/misc