

**RECIPROCAL EASEMENT AGREEMENT AND  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**FOR**

**WELLSPPOINT BUSINESS PARK**

**PFLUGERVILLE, TEXAS**

**Preamble**

This Reciprocal Easement Agreement and Declaration of Covenants, Conditions, and Restrictions (the "Agreement") is entered into on the 20<sup>th</sup> day of October, 1999, by **NEW WELLS POINT PARTNERS, LTD.**, a Texas limited partnership (the "Declarant")

**RECITALS**

1 Declarant is the owner of certain real property (the "Property") located in the City of Pflugerville, County of Travis, State of Texas, designated as Lot(s) Tract 1, Tract 2, Tract 3, Tract 4, Tract 5, and Tract 6 (individually, a "Lot" or collectively, the "Lots") on Exhibit "A," which is attached to this Agreement and incorporated by reference. The legal description of the Property is set forth in Exhibit "B" attached to this Agreement and incorporated by reference.

2 The Declarant intends to develop the Property into a unified commercial, office, or industrial development (the "Development"). The Development and each Lot contained in the Development contains both Commercial, Office, or Industrial Areas and Common Areas, as more particularly described in this Agreement.

3 By entering into this Agreement, the Declarant desires to establish a common, general plan for the joint protection, development, maintenance, and improvement of the Lots in the Development as an integrated, commercial, office, or industrial center. To this end, each Lot is subject to certain protective provisions, covenants, conditions, and restrictions, as described in this Agreement, for the mutual benefit of the Owners and of each Lot. Further, Declarant hereby grants certain reciprocal easements in, to, over, under, and across the Common Areas located on each of the Lots.

**NOW, THEREFORE**, that Declarant, acting herein by and through its undersigned duly authorized representative, does hereby declare that each of the Lots and the Property are and shall be held, transferred, sold, conveyed and occupied subject to the easements, covenants, restrictions, charges and liens hereinafter set forth.

**ARTICLE 1**  
**DEFINITIONS**

**Association Defined**

1 01 "Association" shall mean and refer to Wellspoint Commercial Property Owners Association, Inc , a Texas non-profit corporation, to be organized upon execution and recording of this Agreement

**Board Defined**

1 02 "Board" shall mean and refer to the Board of Directors of the Association

**Commercial, Office, or Industrial Areas Defined**

1 03 "Commercial, Office, or Industrial Areas" means the portion of each Lot and the portions of the Development designated as Commercial, Office, or Industrial Areas on Exhibit "A " Commercial, Office, or Industrial Areas are those portions of the Development designated for (1) the construction by the Owners of buildings (including loading docks and delivery areas appurtenant to those buildings), and (2) the use by the Owners or other Occupants for commercial, office, or industrial purposes related to the Development The term "Commercial, Office, or Industrial Areas" excludes the Common Areas

**Committee Defined**

1 04 "Committee" shall mean and refer to the Architectural Control Committee created pursuant to this Agreement

**Common Areas Defined**

1 05 "Common Areas" means the portion of each Lot and the portion of the Development designated as Common Areas on Exhibit "A," or otherwise in this Agreement, specifically including, without limitation, public utility easements Common Areas are those areas within the Development that are subject to nonexclusive use of the Owners, Occupants, and Users Common Areas include Parking Areas, roadways, walkways, landscaped areas, and all other similar facilities The term does not include Commercial, Office, or Industrial Areas Except as may otherwise be provided in this Agreement, each of the Owners will continue to own and be responsible for maintaining all of the Common Areas on their respective Lots

**Development Defined**

1 06 "Development" means the Lots and the Property described in Recitals 1 and 2 The Development contains both Common Areas and Commercial, Office, or Industrial Areas as set forth in Exhibit "A" and in this Agreement

**Lender Defined**

1 07 “Lender” means a mortgagee under a mortgage or the beneficiary under a deed of trust in a Lot or a portion of a Lot in the Development

**Occupant Defined**

1 08 “Occupant” means any Person entitled at any time to the use and occupancy of a portion of the Commercial, Office, or Industrial Areas in the Development under this Agreement or under a lease, license, concession agreement, or other instrument or arrangement

**Owner Defined**

1 09 “Owner” means the legal owner of a Lot or a portion of the Property in the Development, and all Owners are collectively referred to as the “Owners ” As of the date of this Agreement, Declarant is the sole Owner of all of the Property Each Owner shall become an Owner and party to this Agreement, and shall continue to be an Owner and party as long as it owns any part of the Property

**Parking Areas Defined**

1 10 “Parking Areas” means those Common Areas used for the parking of motor vehicles, including incidental roadways, walkways, and landscaping contained within these Parking Areas However, truck ramps, and loading and delivery areas located in Common Areas and immediately adjacent to buildings in Commercial, Office, or Industrial Areas are not included in “Parking Areas ”

**Person Defined**

1 11 “Person” means an individual or a partnership, firm, association, corporation, trust, or any other form of legal or business entity

**Sale-Leaseback Defined**

1 12 “Sale-Leaseback” means an arrangement satisfying all of the following criteria

- (a) An Owner as transferor, transfers title to all or part of its Lot for the purpose of financing improvements to be constructed on the Lot
- (b) The Owner, as lessee, simultaneously leases back the entire Lot (or portion of it) from the then-fee owner (“Fee Owner”)
- (c) The Owner agrees, as part of the arrangement, to assume all obligations under this Agreement

## **Users Defined**

1 13 “Users” means all Persons who have been granted permission to use the Common Areas, including the Owners, Occupants, employees, service and other personnel, customers, agents, and contractors

## **Utility Systems Defined**

1 14 “Utility Systems” means, collectively, sewers, water and gas pipes and systems, drainage lines and systems, electric power conduits, wires and systems, telephone conduits, wires and systems, and other public utilities

## **ARTICLE 2**

### **EASEMENTS**

#### **Walkways**

2 01 Declarant and each Owner, as grantors, grant to the other Owners, as grantees, nonexclusive easements for walkways for pedestrian and incidental use through the Common Areas located on the Lots and the Property

#### **Parking and Other Areas**

2 02 Declarant and each Owner, as grantors, grant to the other Owners, as grantees, nonexclusive easements for motor vehicle ingress and egress and parking, as well as incidental uses, through the Common Areas located on the Lots and the Property

#### **Utility Easements**

2 03 Declarant and each Owner, as grantors, grant to the other Owners, as grantees, nonexclusive easements through, over, across, and under the Common Areas located on the grantor’s Lot for construction, installation, maintenance, removal, use, and replacement of Utility Systems

#### **Nature of Easements**

2 04 The Lots benefited by each easement in Sections 2 01 through 2 03 constitute the dominant estate, and the Lots burdened by each easement constitute the servient estate Each granted easement is appurtenant to and for the benefit of each Lot owned by each grantee of the easement These grants of easement benefits each Owner, each Owner’s successors, assigns, Occupants, and Users No easement may be transferred, assigned, or encumbered except as appurtenant to the benefited Lots

### **Location of Utility Systems**

2 05. Except when infeasible, all secondary Utility Systems must be located underground. A Utility System, including primary Utility Systems, that must be located above ground must be placed so as to not interfere with the use of Common Areas.

### **Repair and Maintenance of Utility Systems**

2 06. The grantee or grantees of a Utility Systems easement is responsible for all maintenance and repairs of the Utility Systems located within the easement. All maintenance and repairs must be performed so as to

- (a) Minimize interference of traffic and obstruction of business on the servient Lot.
- (b) Make adequate provision for the safety and convenience of all persons using the surface of such areas.
- (c) Replace and restore the areas and facilities to the condition in which they were prior to the performance of such work.
- (d) Hold all other parties harmless against claims including costs and attorney's fees arising from the performance of such work or use of such easements.
- (e) Notify in writing the Owner on whose land such work is to be performed not less than thirty (30) days prior to commencement of such work, provided, however, that in the event of an emergency, this provision is deemed waived and a Owner may perform necessary work after oral approval by the other Owner's managing employee on the premises. Such approval must be confirmed by letter or telegram as soon as possible.

### **Duration of Easements**

2 07. Each easement granted under this Article continues in effect until the use of the easement has been abandoned for a period of at least two (2) years.

## **ARTICLE 3**

### **OPERATIONS AND USE**

#### **Name of Development**

3 01. The name of the Development is Wellspoint Business Park and the name may not be changed without the prior written consent of all the Owners.

#### **Permitted Uses**

3 02. Subject to the limitations set forth in this Article, the Development may be used only for the development, construction, leasing, operation, and maintenance of commercial,

office, or industrial business establishments and related facilities (such as the Common Areas) customarily located in a first class commercial, office, or industrial development located in Pflugerville, Texas

**Prohibited Operations and Uses**

- 3 03 No Property may be used for any of the following
  - (a) Automobile Repair and Maintenance
  - (b) Automobile Sales and Rental
  - (c) Bar / Tavern
  - (d) Billiard / Pool Room
  - (e) Bus Depot
  - (f) Car Wash
  - (g) Cemetery
  - (h) Dance Hall
  - (i) Exhibition Ground
  - (j) Fertilizer Sales, Retail or Wholesale
  - (k) Golf Course
  - (l) Golf Course - Driving Range
  - (m) Hotel / Motel
  - (n) Mortuary
  - (o) Pawn Shop
  - (p) Pumping Plant, Public
  - (q) Welding Shop

**Prohibited Nuisances**

3 04 No Party may conduct or permit any activity or use on its Lot that

- (a) Constitutes a private or public nuisance
- (b) No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and any such container shall be fenced on at least three sides or otherwise appropriately screened from view
- (c) Involves the use of any noxious, toxic, hazardous, or corrosive chemical, fuel, gas, or other substance
- (d) Involves a risk of fire, explosion, or other dangerous hazard
- (e) Involves the burning or incineration of garbage or refuse
- (f) Violates a law, ordinance, or regulation of any governmental agency
- (g) There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage that is approved by the Committee in accordance with drainage standards established by the City of Pflugerville
- (h) No tent, shack or other temporary building, improvement or structure shall be placed upon the Property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen, and sales personnel may be maintained with prior approval of the Committee, such approval to include the nature, size, duration and locations of such structures. No pre-constructed, prefabricated or existing structure may be moved or relocated to any portion of the Property, unless approved by the Committee
- (i) No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, without the prior approval of the Committee
- (j) The Board shall establish rules and regulations concerning the use and storage of all vehicles on the Property, which the Board, in its discretion, may delegate to the Committee. Such rules and regulations may include the designation of specified areas within the Property for the parking and storage of vehicles that are over-sized, unsightly, or may not be used on a daily basis, such as tractors, trucks, trailers, forklifts, and buses where it is screened from view from all adjoining properties, including property outside of the Development, or placed in a position so as not to be intrusive to the other Owners
- (k) No outdoor storage of any items or materials shall be permitted in any portion of the Property without the prior written consent of the Committee, which shall only permit storage where it is screened from view from all adjoining properties, including property outside of the Development, or placed in a position so as not to be intrusive to the other Owners

## **Rules and Regulations**

3 05 The Owners may from time to time adopt Rules and Regulations pertaining to the use of all Common Areas and other areas of the Development by Occupants and Users, provided that no rule or regulation abrogates or modifies the rights granted to any Owner under this Agreement. Moreover, all Rules and Regulations apply equally and without discrimination to all Users and Occupants. As part of its obligations to manage, operate, and maintain the Development, the Association must enforce these Rules and Regulations. No portion of the Common Areas may be used for commercial, office, or industrial purpose by an Occupant or User except as permitted by this Agreement or by the Rules and Regulations.

## **Sign Requirements**

3 06 No sign, symbol, advertisement, or billboard may be constructed, used, maintained, erected, posted, displayed, or permitted on or about any portion of the Development except as follows:

(a) Storefront, establishment name signs may be used in the Commercial, Office, or Industrial Areas of each such Lot in the Development provided that such signs

(1) Identifies the name, business, or symbol of the establishment

(2) Is harmonious with the general exterior architectural style of the buildings in the Development

(3) Is of a type, size, and design commonly found in commercial, office, or industrial development located in Pflugerville, Texas

(4) Otherwise complies with the sign criteria and requirements established in this document

(5) Has been approved by the Committee

(6) Comply with all City of Pflugerville sign ordinances

(b) Signs required by law will be permitted, but only after review and approval by the Committee

(c) Compliance with the requirements of these sign criteria requirements is strictly enforced. Any installed nonconforming or unapproved signs must be brought into compliance at the expense of the Owner or Occupant. Owners and Occupants are responsible for the fulfillment of all requirements and specifications. Owners and Occupants are fully responsible for the operations of their sign contractors.



(d) The Committee is authorized to administer and interpret the criteria and requirements of these sign requirements but has no power to authorize any variances

(e) Each Owner or Occupant will submit or cause to be submitted to the Committee for approval at least two (2) copies of detailed drawings covering the location, size, layout, design, and color of the proposed sign, including all lettering or graphics

(f) Owners and Occupants are responsible for obtaining any and all government agency permits and approvals for signs and their installation before installing any sign

(g) Except as otherwise provided herein, the following are not permitted in the Development

document

- (1) Painted lettering, except as expressly required or allowed in this document
- (2) Flashing, moving, neon, or audible signs
- (3) Except as provided in Section 3.06(1) below, pylon or pole signs
- (4) Exposed tubing or raceways
- (5) Labels on the exposed surface of signs except those required by local ordinance which later will be in an inconspicuous location
- (6) Special backgrounds for signs
- (7) Signs perpendicular to the face of the building
- (8) Location of signs of any sort on canopy roofs or building roofs
- (9) Wording on signs that includes the product sold, except when identification of the occupant would otherwise be impossible
- (10) Projection of any portion of a sign above the parapet or top of wall on which it is mounted
- (11) Script lettering, except when it is an established part of an Occupant's trade script signature

(h) All electrical signs must bear the UL label, and their installation must comply with all local building and electrical codes. All cabinets, conduits, conductors, transformers, and other equipment must be concealed. Electrical service to all signs must be from the Occupant's meters

(i) Signs are permitted only within the sign areas as designated by the Committee or any governmental agency having proper authority

(j) Any national or regional company or franchise located in the Development may affix to the building or space occupied by them their usual trade name signs or logos that are customarily used for their other locations in Texas, whether or not they conform to the

requirements set forth in Section 3 06(g) However, such signs must comply with all other provisions of these Sign Requirements, including prior written approval by the Committee, and any governmental agency having proper authority

(k) The Declarant (so long as Declarant is an Owner) may establish an area or areas at the entryways within the Development for the construction of a monument sign for the use of all of the Owners or Occupants Any such monument sign need not conform to the requirements set forth in this Section 3 06(g) However, such signs must comply with all other provisions of these Sign Requirements, including prior written approval by the Committee and any governmental agency having proper authority

(l) Notwithstanding any provision herein to the contrary, one (1) pole sign, whether or not they conform to the requirements set forth in Subsection 3 06(g), may be erected on each Lot, however, such signs must comply with all other provision of these Sign Requirements, including prior written approval by the Committee and any governmental agency having proper authority No such pole sign shall exceed twenty feet (20') in height above the respective finished elevation of the Parking Areas on such Lot

### **Sound and Light Projections**

3 07 No Occupant may operate or maintain any system or electronic device (such as loudspeakers or search lights) that projects sound or light beyond the confines of the Occupant's retail establishment The noise level of mechanical equipment will not exceed 60 decibels at the exterior boundary line of the Property All lighting will be hooded or shielded from view from adjacent single-family residential areas so that the light source is not directly visible

## **ARTICLE 4**

### **DEVELOPMENT STANDARDS FOR DEVELOPMENT**

#### **Uniform Plan for Development**

4 01 A primary purpose of this Agreement is to create and implement a uniform plan for the development of the Development This uniform plan assures that all development is functionally, architecturally, and aesthetically compatible with all other buildings and improvements in the Development Therefore, all new construction, reconstruction, alterations, or remodeling must comply with all terms, covenants, and conditions of this Agreement

#### **Height Limitations**

4 02 No buildings (excluding architectural features and mechanical equipment) constructed on the Lots shall exceed forty feet (40') in height above the respective finished elevation of the Parking Areas on such Lot

### **Limit Lines for Buildings**

4 03 The Property shall be subject to the following setback restrictions as described in this Section 4 03 and as set forth in Exhibit "C" attached to this Agreement and incorporated herein by reference. All setback lines for buildings and structures constructed on any portion of the Property shall be the same as those required by the City of Pflugerville in connection with any recorded subdivision plat or approved site plan for any portion of the Property. No building or structure shall be constructed within fifty feet (50') of the boundary line of any Lot adjacent to any single-family property. Within this fifty foot (50') setback line, there shall be a ten foot (10') landscape strip adjacent to a front property line and a fifteen foot (15') landscape strip adjacent to a rear property line. No building or structure shall be constructed within seventy-five feet (75') of the boundary line of any Lot adjacent to Olympic Drive. Within this seventy-five foot (75') setback line, there shall be a twenty foot (20') landscape strip adjacent to Olympic Drive. The following improvements are expressly exempt from these setback requirements to the extent permitted by the City of Pflugerville: structures below and covered by the ground, steps, walks, driveways, vehicular circulation areas, parking, curbing, planters, walls, landscaping, and fences or hedges, and any other improvements approved by the Committee and any governmental agency having proper authority.

### **Parking Areas and Vehicular Access**

4 04 Parking Areas shall be curbed and paved, shall be adequately screened by use of either berms, trees, landscaping, wood, iron, or masonry fences, or other means acceptable to the Committee. If parking needs increase, additional off street parking shall be provided by the Owner. All parking areas shall provide the minimum number of parking spaces that would be required under City of Pflugerville ordinances specifying parking requirements for the type of use for which the parking is being provided. No commercial truck access will be permitted from the Development to Olympic Drive.

### **Sewage System**

4 05 Sewer drainage and utility lines, conduits, or systems may not be constructed or maintained above the ground level of the Development unless such lines, conduits, or systems are within approved enclosed structures, and must conform with requirements of the City of Pflugerville, or other applicable governmental or private agency having jurisdiction of the work.

### **Lighting for Parking Areas and Building Entry**

4 06 All Parking Areas and building entry areas shall be lighted for safety. Lighting for Parking Areas must be provided by fixtures of such type as approved by the Committee, which shall meet the minimum of the Illuminations Engineers Standards for Recommended Maintained Horizontal Illuminances for Open Parking Facilities for Medium uses or such other similar uses as the Development, as may be reasonably required by the Committee. Light poles shall not exceed twenty-five feet (25') in height in addition to the height of any pedestals, piers, or bases on which the light poles are mounted which shall not exceed four feet (4') in height. All lighting will be hooded or shielded from view from adjacent single-family residential areas so

that the light source is not directly visible. The restrictions in this Section 4.06 do not apply to the soccer field area.

### **Building Maintenance**

4.07 Each Owner, at its sole expense, must maintain any building located on the Commercial, Office, or Industrial Area of that Owner's Lot in a well maintained condition and repair. This obligation includes regular cleaning and painting, and, as necessary, reroofing, repair and replacement of stucco and wood surfaces, and graffiti removal.

### **Landscaping**

4.08 Landscaping shall be required on all sites contemporaneously with completion of other improvements, but in no event later than sixty (60) days after the first occupancy or completion of buildings, whichever shall first occur, taking into account the inability of landscaping to occur in areas subject to construction activities when a phased construction program is in progress, except that final landscaping which, due to the season, cannot in the opinion of the Committee be completed within such sixty (60) day period, must be completed within one hundred eighty (180) days after first occupancy or completion of the buildings, whichever shall first occur. All landscaping shall conform to a landscaping plan approved by the Committee and drawn by a registered landscape architect. Ornamental trees must be a minimum six feet (6') in height at time of planting. Additional factors to be considered by the Committee may include, but shall not be limited to, whether the plans meet the following criteria:

- (a) Provide automatic underground sprinkling systems for all landscaped areas where appropriate in regard to the vegetation utilized.
- (b) Do not obstruct sight lines at street or driveway intersections.
- (c) Preserve existing trees to the extent practical.
- (d) Include trees between building lines and street property lines and in parking areas in numbers and at distance intervals required by the City of Pflugerville.
- (e) Permit reasonable access to public and private utility lines and easements for installation and repair.
- (f) Use berms and shrubbery to screen parking areas adjoining streets on the Property.
- (g) Comply with design and specification criteria that would be required under City of Pflugerville ordinances specifying landscape requirements.
- (h) Provide for sidewalk as may be required under City of Pflugerville ordinances.
- (i) Use of a mix of landscaping elements to prevent monotonous styles.

(j) Use of native Texas species and Xenscape design standards for plant materials and irrigation for thematic consistency and water conservation

### **Screening and Berms**

4 09 Any antennae, satellite dish receivers or other devices designed to receive telecommunication signals and approved by the Committee, storage areas, air conditioning and heating equipment, incinerators, storage tanks, truck based on the premises, roof objects (including fans, vents, cooling towers, skylights and all roof-mounted equipment which rises above the roof line), trash containers and maintenance facilities shall either be housed in closed buildings, screened on three sides, integrated into the building architecture or otherwise adequately screened from public view in a manner and at a location approved by the Committee, which may include landscaping or fences of solid materials

Unless otherwise approved by the Committee, all lines or wires for communication or for transmission of sound or current, not within a building, shall be constructed or placed and maintained underground

Prior to occupancy of any structure on the Property, either landscaped berms, trees, landscaping or other means acceptable to the Committee shall be placed between the building setback line and the curb of the streets adjacent to the site on which the structure will be located. If landscaped berms are used, the location, measurements, and configuration of such berms must be approved by the Committee, provided that the location, measurements, and configuration of such berms do not restrict visibility, drainage, site access or public safety

### **Loading Docks and Areas**

4 10 Loading docks and areas shall not be located on the street side of any building or structure and shall be screened from view from Heatherwilde Boulevard and Olympic Drive. The Committee may approve such location in writing (subject to express screening requirements) on one street side of corner buildings or structures. Except for the parking, turnaround, and maneuvering areas, the loading areas may not encroach upon setback areas, except that the Committee may approve such encroachment in connection with the approval of street side loading areas for corner buildings as described in the preceding sentence. Loading docks and areas shall be screened in a manner approved in writing by the Committee, considering such things as location (street side or rear side) and views from adjacent and nearby properties. Truck deliveries to the Development will be restricted to between the hours of 7 00 a m (CT) to 7 00 p m (CT) on Monday through Saturday, and 12 00 noon (CT) to 7 00 p m (CT) on Sunday, and to allow for just in time deliveries under procedures as may be approved by the Committee

## **ARTICLE 5**

### **PREPARATION OF DEVELOPMENT PLANS**

#### **Designation of Lot Architects**

5 01 Each Owner, at its own expense, will designate and hire an architect to prepare the plans and specifications for the building to be constructed on the Commercial, Office, or Industrial Area of its Lot. Any Owner may change its previous designation of its Lot Architect at any time, provided that Owner gives written notice of the change to the Committee.

#### **Preparation of Commercial, Office, or Industrial Area Plans**

5 02 Each Owner will cause its respective Lot Architect to prepare and submit final Commercial, Office, or Industrial Area Plans for its Lot to the Committee for review under the procedures and along with the review fees as described in Article 14. Commercial, Office, or Industrial Area Plans for a Lot must meet all the Development Standards set forth in Article 4, the Construction Standards in Article 6, as well as all other requirements of this Agreement. The Commercial, Office, or Industrial Area Plans shall be subject to the review procedures set forth in Article 14.

#### **Certification of Approval**

5 03 After final approval pursuant to the procedures and subject to the review fees described in Article 14, all Commercial, Office, or Industrial Area Plans must be stamped, approved, dated, and certified by the Committee, and maintained by it in a safe and convenient place. Once approved and certified, the final plans may not be changed except with the approval of the Committee.

## **ARTICLE 6**

### **CONSTRUCTION OF DEVELOPMENT**

#### **Construction of Commercial, Office, or Industrial Areas**

6 01 At its sole expense, each Owner will cause construction of the building and other improvements on its Lot as described in, and in accordance with, its respective final Commercial, Office, or Industrial Area Plans that were approved under Article 5 of this Agreement. Construction shall commence within 60 days after approval of the respective final Commercial, Office, or Industrial Area Plans. Once construction has commenced, each Owner must diligently and expeditiously pursue completion of the construction.

#### **Construction Standards**

6 02 (a) All building sides of all commercial, office, or industrial structures on the Property must be faced with brick, stone or other material as may be approved by Committee. Tile wall type building materials may be used only on the Property with specific approval of the Committee as to quality and appearance. Windows shall not be glazed or reglazed with mirrored or reflective glass. The Committee will emphasize significant wall articulation and architectural detail on the front facades of each building, and any facade that faces Heatherwilde Boulevard or Olympic Drive.

(b) Construction must conform to plans and specifications submitted to and approved by the Committee prior to construction of any type. Factors to be considered by the Committee in approving building materials and plans and specifications may include but shall not be limited to whether the plans meet the following criteria:

(i) Provide fire protection systems that comply with City of Pflugerville requirements.

(ii) Provide for all underground utilities (public and private).

(iii) Preserve the quality and atmosphere of the area and do not detract from adjacent property.

(iv) Multi-story structures on the Property must meet the applicable fire code requirements of the City of Pflugerville.

(v) Do not make extensive use of highly reflective or mirrored glass.

(c) The sorting, handling, moving, storing, removing and disposing of all trash and waste materials must be housed or screened for all tracts in the Property in a manner approved by the Committee at the time the plans and specifications are submitted. Not more than one (1) waste receptacle area shall be permitted for each building, unless a greater number is approved by the Committee and is justified by a building of an unusual shape, use or configuration, it being the intention of Declarant to encourage the use of trash compactors and to reduce the number of trash dumpsters used within the Property. All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, or reclamation) must be approved by the Committee at the time the plans and specifications are submitted.

(d) All structures shall be equipped with gutters, downspouts, and/or other drainage conveyances. No excavation shall be made except in conjunction with the construction or repair of an improvement. During construction appropriate erosion controls shall be installed and maintained, and when such improvement is completed all exposed openings shall be back filled and graded.

(e) All lighting in parking driveway areas and walkway areas shall be hooded so as to minimize off-site hazards to vehicular traffic.

(f) Once commenced, construction shall be diligently pursued to the end.

(g) All construction shall comply with all applicable governmental laws, ordinances, rules and regulations, and shall have received all required governmental permits or approvals

## ARTICLE 7

### OPERATION AND MAINTENANCE OF COMMON AREAS

#### Maintenance of Common Areas

7.01 The Association, the Owners, and Occupants shall jointly and severally have the duty and responsibility to manage, maintain, and operate all the Common Areas located within the Development, and keep such Common Areas in good condition and repair, clean and free of rubbish and other hazards to Users. The Association's, the Owners', and Occupants' obligation to maintain and operate the Common Areas include the following

(a) Maintenance of surfaces of all paved portions of the Common Areas, including the Parking Areas, sidewalks, and curbs, so that surfaces are level, smooth and evenly covered with the type of surfacing material originally installed or a substitute material that is equal in quality, appearance, and durability

(b) Removal of all papers, debris, filth, and refuse from the Development, and washing or thoroughly sweeping paved areas as required to maintain the Common Areas in a well maintained, clean condition

(c) Maintenance, repair, and replacement as necessary of entrances, exits, directional signs, markers, striping, and lights in the Parking Areas and other Common Areas of the Development

(d) Cleaning and relamping of lighting fixtures as needed

(e) Maintenance and cleaning of all landscaped areas in the Common Areas to keep them in a well maintained and thriving condition, including the regular pruning, weeding, fertilizing, and watering of trees and shrubbery, repair and replacement of the irrigation system, and maintenance and replacement of seasonal bedding plants in designated "color spot" areas of the landscaped areas to maintain blooms in these areas throughout the year

(f) Maintenance, repair, and cleaning of the monument sign, if any, that bears the name of the Development and is located at the entrance to the Development, and any other signs that bear only the name of the Development

(g) Maintenance of all Common Areas free from any obstructions not required or permitted under this Agreement



(h) Payment of all electrical, water, and other utility charges or fees for services furnished to the Common Areas

(i) Maintenance, cleaning, and repairing of all common Utility Systems located in the Common Areas

### **Contracts with Third Parties**

7 02 The Association may contract with third parties to perform any of the responsibilities and obligations under Section 7 01 However, all of the responsible Persons shall remain liable and responsible for the performance of these obligations whether by itself or the third party All third party contracts must include the following provisions

(a) A right by the Association to terminate the contract on 30 days' written notice

(b) Third party's acknowledgement and agreement that the Association is not an agent of the Owners and that only the Association is obligated to the third-party under the contract

### **Insurance for Common Areas**

7 03 The Association must maintain public liability insurance for all Common Areas insuring against the risks of bodily injury, property damage, and personal injury liability occurring or arising during the policy period The insurance required under this section shall have minimum combined single limits of liability and general aggregate limits of liability, and require such additional coverage and endorsements as the Board shall determine from time to time Each Owner must be listed as an additional insured on the policy or policies Each policy must prohibit cancellation except on thirty (30) days prior written notice to each Person listed as an additional insured The Association must furnish each Owner with a copy of any policy of insurance or a certificate of insurance from the insurer As required by law, the Association must maintain workers' compensation insurance covering all employees hired or used by the Association to fulfill its obligations for maintenance and operation of the Common Areas

### **Common Areas Operational Costs Defined**

7 04 The term "Common Areas Operational Costs" means the total of all items of direct cost and expense necessarily and reasonably expended by the Association for the supervision, operation, maintenance, and repair of the Common Areas required under this Agreement, excluding any real property taxes and assessments, which are covered under Article II Premiums for insurance policies required by Section 7 03 are an included expense Any repair or replacement of the Common Areas estimated to cost in excess of Twenty Thousand and No/100 Dollars (\$20,000 00) is considered an extraordinary expense and must not be made by the Association unless and until approved in writing by all the Owners Once approved, such extraordinary expenses are considered a Common Areas Operational Cost

### **Allocation of Common Areas Operational Costs**

7 05 The Association must pay, prior to delinquency, all costs, charges, and expenses incurred in managing, operating, and maintaining the Common Areas as required by this Agreement. Each Owner shall reimburse the Association for its pro rata share of the cost of maintenance of the Common Areas. Each Owner's pro rata share of the Common Areas Operational Costs is calculated on the basis of the ratio of the gross area on that Owner's Lot to the gross area on all Lots in the Development.

### **Common Areas Management Fee**

7 06 The Association may be paid for its managerial services for the Common Areas in an amount equal to three percent of the total of Common Areas Operational Costs for that Accounting Period ("Management Fee"), except that any costs for depreciation, public liability insurance premiums, and any extraordinary expenses, as described in Section 7 04 are excluded before calculating the Management Fee. The Management Fee must be added to and paid by the Owners in the same manner as the Common Areas Operational Costs.

### **Regular Accounting**

7 07 At the end of each quarter, the Association must submit a statement to each Owner showing the amount due to the Association for that Owner's pro rata share of Common Areas Operational Costs and the Management Fee. The statement summarizes by category the amounts expended by the Association during that period. Each Owner must pay to the Association the amount set forth on the statement within 30 days after the date of the statement.

### **Annual Accounting**

7 08 Not later than 60 days after the end of each calendar year, the Association must prepare and submit to each of the Owners an itemized annual statement of actual Common Areas Operational Costs for that entire year. The annual statement includes subtotals for each quarter in that year and documentation to enable the Owners to verify the accuracy of the annual statement. The annual statement sets forth the amount actually paid by each Owner as its pro rata share and the amount actually due from each Owner. Any underpayment must be paid by that Owner to the Association within 30 days after the date of the annual statement. Any overpayment will be either credited to the amount otherwise payable by that Owner for the next quarterly statement or refunded by the Association to that Owner within 30 days.

### **Books of Account**

7 09 The Association must maintain complete and accurate books of account and supporting documentation for each and every amount expended for maintaining and operating the Common Areas under this Agreement. All books and records are kept by the Association for at least two years following the end of that calendar year.

### **Inspection Rights**

7 10 Each Owner, at its sole expense, has the right to inspect or audit the books maintained by the Association under Section 7 09 Any inspection or audit must be performed during reasonable business hours and only after giving the Association three (3) business days written notice

### **Lots Kept Free and Clear of Liens**

7 11 The Association must at all times keep each Lot free and clear of liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to any Lot in connection with the Association's maintenance and operation of the Common Areas If a lien is imposed, the Association must pay the lien within 30 days after its imposition unless the Association elects to contest the lien The Association may contest a claim of lien only if it first records a bond issued by a responsible corporate surety in an amount required to release the lien

### **Transfer of Responsibility to Owners' Association**

7 12 Notwithstanding any provision in Article 7 to the contrary, the responsibility for the Common Areas shall automatically be transferred to the Owner's Association upon being organized pursuant to Article 12 of this Agreement

## **ARTICLE 8**

### **PROPERTY TAXES AND ASSESSMENTS**

#### **Payment Obligation**

8 01 Each Owner must pay, prior to delinquency, all real property taxes, assessments, and other charges levied against that Owner's Lot, including the Common Areas located on that Owner's Lot

## **ARTICLE 9**

### **TRANSFER RESTRICTIONS**

#### **Limits on Transfer**

9 01 No Owner may transfer or assign any right, power, or obligation under this Agreement without also transferring its own Lot or its interest in that Lot The transfer must comply with this Agreement An instrument of transfer must state that the transfer is subject to this Agreement and refer to and incorporate by reference this Agreement Such reference must recite the recording information for this Agreement and for any memorandum of this Agreement

### **No Subdivision**

9 02 No Owner may subdivide or otherwise split or divide its Lot at any time unless approved in writing by all Owners, provided, however, so long as Declarant is an Owner, Declarant reserves the right at any time and from time to time to resubdivide, reclassify, and/or consolidate any or all Lots and/or Property which are then owned by Declarant, if and to the extent Declarant deems such action desirable, in the sole discretion of Declarant. In such event, said Lots and/or Property shall be deemed to be resubdivided, reclassified, or consolidated when Declarant files an amended Plat, in compliance with the applicable land use laws of the State of Texas and ordinances of the City of Pflugerville, reflecting such resubdivision, reclassification, or consolidation in the Official Records of Travis County, Texas

### **Release on Transfer**

9 03 If an Owner conveys, assigns, or transfers its entire interest in its Lot, that Owner is released from obligations under this Agreement subsequent to the date of transfer, provided that the transferring Owner delivers a written notice of the transfer and a written assumption statement, in recordable form and executed by the transferee, to all Owners under this Agreement. If the transferring Owner is obligated to operate and maintain the Common Areas, that Owner may not be released from its obligations until it also delivers a final summary statement of all costs and expenses for the Common Areas as of the effective date. The written summary statement must contain an express statement that the transferee expressly assumes and agrees to be bound by this Agreement.

### **Multiple Owners**

9 04 If an Owner conveys in whole or any portion of its interest in a Lot so as to vest ownership in more than one Person, those Persons (the "Joint Owners of the Lot") are considered a single Owner under this Agreement. The Joint Owners of the Lot must appoint one Person to act as their agent in carrying out this Agreement (the "Agent"). The agent appointment must be in writing, duly executed and acknowledged by each Joint Owner of the Lot, and recorded in the official records of Travis County, Texas. The performance of rights and duties by the Agent is binding on each Joint Owner of the Lot. Each Joint Owner of the Lot may act only through its appointed Agent, and the other Owners have the right to deal exclusively with and rely solely on the acts or omissions of the Agent. However, the appointment of this Agent does not relieve a Joint Owner of the Lot from any of its obligations under this Agreement.

## **ARTICLE 10**

### **DEFAULT, TERMINATION, AND REMEDIES**

#### **Legal and Equitable Remedies**

10 01 If an Owner or Occupant of that Owner's Lot actually breaches or threatens to breach a provision of this Agreement, any other Owner has the right to pursue any available legal or equitable remedy, such as damages, injunctions, and restraining orders, in addition to those

remedies specified here, except for those remedies that are expressly prohibited. All remedies are cumulative, the pursuit of any available remedy does not constitute a waiver or election of remedies with respect to all other available remedies. An Owner is responsible for any default by an Occupant of that Owner's Lot.

### **Notice Before Default**

10 02 Unless provided otherwise in this Agreement, an Owner is not deemed to be in default under this Agreement until that Owner has been notified in writing by any other Owner that describes the act or omission and either

(a) The Owner fails to cure the default within 30 days after the date of the notice of default ("Cure Period")

(b) If the default is not capable of cure within the Cure Period, the Owner fails to commence cure within the Cure Period and to diligently pursue it to completion within a reasonable time

### **Termination Not Permitted for Breach**

10 03 A breach of this Agreement does not entitle a Owner or Person to cancel, rescind, or terminate this Agreement in whole or part

### **Right of Nondefaulting Party to Cure**

10 04 A Owner has the right, but not the obligation, to cure a default of any other Owner on behalf of and at the sole expense of the defaulting Owner. This right of cure may not be exercised until

(a) Written notice as provided by Section 10 02 has been given

(b) The Cure Period set forth in Section 10 02 has elapsed and the defaulting Party remains in default

(c) The Additional Cure Period described in Section 11 07 has elapsed and the Lender has neither cured nor commenced a cure of the default, or commenced foreclosure proceedings within the Additional Cure Period or the extended period provided for in that same section

### **Reimbursement Rights**

10 05 If a Owner cures a default of another Owner under Section 10 04, then the defaulting Owner must pay to the curing Owner

(a) All costs and expenses reasonably incurred in effecting the cure, plus interest at the then-maximum legal rate

- (b) All court costs and reasonable attorney's fees incurred by the curing Owner

### **Lien Rights**

10 06 All amounts owed by a defaulting Owner to a curing Owner under Section 10 05 constitute a lien on the Lot of the defaulting Owner, or on the interest of the defaulting Person in the Owner. This lien is effective on the date the curing Owner records a claim of lien in the official records of Travis County, Texas. The claim of lien must set forth, at a minimum

- (a) A legal description of the Lot of the defaulting Owner
- (b) A reference to this Agreement
- (c) A statement that the lien is authorized by this Agreement
- (d) The amount of the lien
- (e) A description of the default and the curative action taken by the lienholder-Owner

### **Force Majeure**

10 07 Unless otherwise provided in this Agreement, a Party may be excused from a delay in performance under this Agreement that is caused by the act of a public enemy, war, war defense condition, act of God, the elements, strike, walkout, or other causes beyond the Party's reasonable control. However, each Party must use reasonable diligence to avoid any such delay and to resume its performance as promptly as possible after the delay.

### **Termination**

10 08 All provisions of this Agreement terminate 60 years after the date this Agreement is recorded, except for certain easements described in Article 2, which terminates as provided in that Article.

### **Amendment**

10 09 Except as otherwise provided in this Agreement, this Agreement, including its Exhibits, may be cancelled, modified, or amended only by a writing that is executed by all of the Owners and, for so long as any first lien of a Lender or any Sale-Leaseback is in effect for a Lot in the Development, by the Lender or Fee Owner-Lessor of the affected Lot, and to the extent any such cancellation, modification, or amendments to provisions contained in Articles 2, 3, 4, 5, 6, 7, or this Section 10 09, by the City of Pflugerville, and recorded in the County of Travis, Texas. No cancellation, modification, or amendment may require the prior approval or consent of any Occupant or User. Notice of any such cancellation, modification, or amendment made in accordance with this Section 10 09 shall promptly be sent to the Wells Point Homeowners'

Association, or its successor or assign (“WPHOA”) at the addresses of the WPHOA Club Notices permitted or required to be served or given to the WPHOA are deemed given to the WPHOA when delivered or mailed to the WPHOA in accordance with Section 15 04

### **Attorneys’ Fees**

10 10 In any action between Parties concerning this Agreement or for enforcement of rights and duties of an Owner, the prevailing Owner in the action is entitled to reasonable attorney’s fees

## **ARTICLE 11**

### **RIGHTS OF LENDERS AND OTHERS**

#### **Breach Not to Defeat Mortgage**

11 01 This Agreement is superior and senior to any lien, mortgage, or deed of trust placed on any Lot or a portion of any Lot Any Owner who has encumbered its Lot with a mortgage or deed of trust prior to the effective date of this Agreement (as defined in Section 15 09) must cause its Lender(s) to execute and record in the official records of County, Texas, a written instrument subordinating its encumbrance to this Agreement A Lender is not obligated to perform any terms, covenants, or conditions of its borrower- Owner under this Agreement unless and until the Lender acquires title to the borrower- Owner’s Lot, and, then, only for the period during which the Lender retains title to a Lot Any Person, including a Lender, who acquires title to a Lot as a result of a default under a mortgage or deed of trust is obligated to perform all terms, covenants, and conditions of the defaulting borrower- Owner under this Agreement However, neither the making of a mortgage or deed of trust by a borrower- Owner on its Lot nor the subsequent foreclosure of any mortgage or deed of trust relieves the borrower- Owner of its liability under this Agreement

#### **Notice to Lender**

11 02 A duplicate copy of any and all notices a Owner may give to or serve on any other party pursuant to or related to this Agreement, must be mailed to a Lender for the affected Lot, if the Lender has given a “Request for Notices” to the noticing Owner in a writing that also contains the Lender’s name, address, and a description of the Lender’s security interest in the Lot Notices permitted or required to be served or given to a Lender are deemed given to the Lender when delivered or mailed to the Lender in accordance with Section 15 04

#### **Right of Lender to Perform**

11 03 A Lender for an affected Lot may, at any time during which its lien is in effect, perform any act required of its borrower- Owner under this Agreement, and, thus, effectively prevent a breach of this Agreement by its borrower- Owner

### **Right of Lender to Realize on Security**

11 04 A Lender for an affected Lot may, at any time during which its lien is in effect, realize on its security interest by commencing foreclosure proceedings, agreeing to an assignment in lieu of foreclosure, or pursuing any other remedy allowed by law, equity, or the security agreement evidencing the lien

### **Conditions for Lender's Right to Cure Defaults**

11 05 A Lender has a right to cure the default of its borrower- Owner pursuant to Section 11 07 provided all of the following conditions are met

(a) An Owner has given another Owner a notice of default as described in Section 10 02

(b) The defaulting Owner fails to cure or commence to cure the default within the Cure Period provide by Section 10 02

(c) The Lender with a lien on the defaulting Owner's Lot has given the noticing Owner a Request for Notices as allowed under Section 11 02

### **Notice to Lender**

11 06 If all of the conditions of Section 11 05 are met, the noticing Owner must give the Lender an additional notice stating that the defaulting Owner has failed to cure or commence cure of the default within the Cure Period and that the Lender has the right to cure the default

### **Right of Lender to Cure Default**

11 07 On receipt of the notice under Section 11 06, the Lender may do any of the following

(a) Cure the breach or default within 30 days after the date of the additional notice (the "Additional Cure Period"), if the default can be cured by payment of money

(b) Cure the breach or default within the Additional Cure Period, when the breach or default must be cured by something other than the payment of money and it is curable within that time

(c) Cure the breach or default in a reasonable time when something other than money is required to cure the default and the cure cannot be performed within the Additional Cure Period, provided that acts to cure the breach or default are commenced within the Additional Cure Period and thereafter are diligently continued by the Lender

### **Subordination of Lien Claims to First Encumbrances**



11 08 A lien created under Section 10 06 is subordinate to the interest of any Lender under a first deed of trust or first mortgage recorded on that Lot in good faith and for fair value, whether the claim of lien is recorded before or after the first deed of trust or first mortgage

### **Subordination of Lien Claims to Sale-Leasebacks**

11 09 A lien created under Section 10 06 is subordinate to the interest of a Fee Owner under a Sale-Leaseback arrangement with a Owner that has been recorded on that Lot in good faith and for fair value, whether the claim of lien is recorded before or after the first deed of trust or first mortgage, provided that the Owner -lessee's transfer of title to its Lot (or a portion of the Lot) is not subject to a secured obligation for the payment of money other than real estate taxes

### **Rights of Fee Owner in Sale-Leaseback**

11 10 In the case of a Sale-Leaseback, the Fee Owner of the Lot (or portion of the Lot) has all of the rights and privileges under this Agreement of a Lender for as long as the lease remains in existence. If the leasehold interest is terminated, and notwithstanding any provision in the lease purporting to prohibit a merger of title in the Fee Owner, the Fee Owner is obligated to perform all terms, covenants, and conditions of the Owner -lessee under this Agreement. Nevertheless, this imposition of liability on the Fee Owner, in no way, relieves the Owner -lessee of its liability under this Agreement

## **ARTICLE 12**

### **OWNERS' ASSOCIATION**

#### **Organization**

12 01 The Declarant must organize the Owners' Association for the Development for the purpose of operating and maintaining the Common Areas in the Development and enforcing the covenants, conditions, and restrictions contained herein. The Association shall be a nonprofit corporation, organized and incorporated under the laws of the State of Texas

#### **Membership**

12 02 All of the Owners shall automatically be members in the Association. Pursuant to Article 13, Owners are required to pay monthly dues and assessments to the Association and shall be entitled to vote as members on the basis of the ratio of the gross square footage of area on that Owner's Lot to the gross square footage of area on all Lots in the Development.

#### **Governing Documents**

12 03 The governing instruments may not contain any provision that grants the Association power to abrogate, modify, or otherwise affect any right granted to an Owner under this Agreement. The governing instruments must provide that the Board Directors for the Association consist of not more than five (5) directors, and must grant each Owner the right to appoint one director to the Association's Board

## **Duties of the Association**

12 04 Subject to and in accordance with these restrictions, the Association, acting through the Board, shall have and perform each of the following duties

(a) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with all improvements of whatever kind and for whatever purpose which may be located in said areas, and to accept, own, operate and maintain all other property, real and personal, conveyed or released to the Association by Declarant and to maintain in good repair condition all lands, improvements and other Association property owned by or leased to the Association

(b) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments

(c) To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount to carry out the Association functions

(d) To make, establish and promulgate and in its discretion to amend or repeal and reenact, such rules (the "Rules") and Bylaws (the "Bylaws"), not in conflict with this Agreement, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association property. Without limiting the generality on the foregoing, such Rules may set dues and fees and prescribe the regulations governing the operation of Association property. Each member of the Association shall be entitled to examine such Rules and Bylaws at the time during normal working hours at the principal office of the Association

(e) To enforce, on its own behalf and on behalf of all Owners, this Agreement, as beneficiary of said covenants, conditions and restrictions and as assignee of Declarant, and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of this Agreement, the Rules or Bylaws. The Board shall be authorized to institute litigation, settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the provisions of this Agreement and/or the Rules and Bylaws, provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns

(f) To keep books and records of the Association's affairs

(g) To carry out and enforce all duties of the Association set forth in this Declaration or the Articles of Incorporation ("Articles") or Bylaws of the Association

## **Roadway Maintenance and Landscape Obligation**

12 05 The Association shall maintain the landscaped rights-of-way within the Development along Heatherwilde Boulevard, Olympic Drive, and Wells Branch Parkway. In addition, the Association shall maintain, landscape and repair easements, rights-of-way, sidewalks, paths, trails, detention ponds and other Common Areas of the Property, as appropriate. The Association shall maintain all areas dedicated to the Association for maintenance.

## **Powers and Authority of the Association**

12 06 The Association shall have the power of a Texas nonprofit corporation, subject only to such limitations. Nothing above contained, however, shall be construed to permit the use or occupancy of any improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Agreement.

(a) To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(b) To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of its property, the enforcement of this Agreement, the Bylaws or the Rules or in the performance of any other duty, right, power or authority of the Association.

(c) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association, if any.

(d) To maintain and repair easements, roads, driveways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other Common Areas of the Property, as appropriate.

(e) To obtain and pay for any other property and services and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Agreement or the Articles or Bylaws of the Association.

(f) To construct new improvements or additions to Association properties, subject to the approval of the Committee as in this Agreement required.

(g) To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or other person.

(h) To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise

(i) To create a subsidiary or other association to have the rights and powers and to perform the duties, obligations or functions necessary to the obtaining of a tax exemption, if it shall be ruled or held that an exemption under the Internal Revenue Code is unavailable to the Association under this Agreement, or alternatively, the Association under this Agreement, or alternatively, the Association may retain the rights, powers, duties, obligations or functions which prevent the obtaining of the tax exemption and transfer some or all of its other rights, powers, duties, obligations and functions to such subsidiary or other association

### **Indemnification**

12 07 The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed actions, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, committee member (including but not limited to the Committee), employees, servant or agent of the Association, against expenses (including attorney's fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (i) acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in or was opposed to the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise

## **ARTICLE 13**

### **ASSESSMENTS**

#### **Covenants for Assessments**

13 01 Declarant, for each Lot owned by it within the Property, and each subsequent Owner of any such Lot, by acceptance of a deed therefor, whether or not it shall expressly so state, hereby covenants to pay to the Association (i) annual assessments (as specified in Section 13 03 hereof) and (ii) special assessments for capital improvements (as specified in Section 13 04 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided

## **Purpose of Assessments**

13 02 The assessments levied by the Association shall be used exclusively for the purposes of carrying out the purposes of the Association as stated herein or as otherwise provided in its Articles of Incorporation

## **Annual Assessment**

13 03 Each Owner of any part of the Property, including Declarant, shall pay to the Association an annual assessment on the basis of each per square foot, in that portion of the Property so owned, as determined from time to time by the Board, provided that prior to sale by Declarant to other than a successor Declarant of sixty-six percent (66%) of the Property, Declarant shall only pay or be assessed the difference between the actual expenses of the Association (in carrying out its duties hereunder) and the assessments received from all Owners other than Declarant. The rate of annual assessment may only be increased by more than ten percent (10%) over the prior years' annual assessment by vote of the membership of the Association, as provided in Section 13 05 hereof. The Board may, after consideration of current operation and maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. The Association may not accumulate a surplus at the end of any year which is more than two (2) times the maximum permissible annual assessment for that year. The Board shall, should excess surplus (as above defined) exist at the end of any year, reduce the next total annual assessment by an amount at least equal to said excess surplus.

## **Special Assessments**

13 04 In addition to the annual assessments authorized by Section 13 03 hereof, the Association may, by vote of its members as provided in Section 13 06 hereof, levy in any assessment year or years a special assessment for the purpose of defraying, in whole or in part, repair or replacement of any improvement located upon the Property, including the necessary fixtures and personal property related thereto or for carrying out other purposes of or otherwise benefiting the Association. Any special assessments shall be allocated proportionately among the Owners in accordance with the gross square footage of the Lot owned by each as compared with the gross square footage of all of the Lots within the Property.

## **Vote Required for Increase in Rate of Annual Assessment**

13 05 The increase in the rate of the annual assessment by more than ten percent (10%) over the prior years' annual assessment as authorized by Section 13 03 hereof must be approved by two-thirds (2/3) of the total eligible votes of the membership of the Association, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

### **Vote Required for Special Assessment**

13 06 The special assessment authorized by Section 13 04 hereof must be approved by two-thirds (2/3) of the total eligible vote votes of the membership of the Association, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting

### **Commencement Date of Annual Assessment**

13 07 The first annual assessment provided for herein shall commence on January 1, 2001, and shall continue thereafter from year to year

### **Due Date of Assessments**

13 08 The first annual assessment shall become due and payable on January 31, 2001, and shall be considered delinquent if not paid within thirty (30) days from its due date The assessments for any year thereafter shall become due and payable on January 1st of each succeeding year and delinquent if not paid within thirty (30) days of their due date The due date and delinquent date of any special assessment under Section 13 04 hereof shall be fixed in the resolution authorizing such assessment

### **Owner's Personal Obligation for Payment of Assessments**

13 09 The annual and special assessments provided for herein shall be the personal and individual debt of the Owner of the Property covered by such assessments No Owner may exempt himself from liability for such assessments In the event of default in the payment of any such assessment, the Owner of the Property shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the assessment from the due date thereof (or if there is no such highest rate, then at the rate of eighteen percent (18%) per annum together with all costs and expenses of collection, including reasonable attorney's fees

### **Assessment Lien and Foreclosure**

13 10 All sums assessed in the manner provided in this Article but unpaid, together with interest as provided in Section 13 09 hereof and the cost of collection, including attorney's fees as herein provided, shall there upon become a continuing lien and charge on the Property covered by such assessment, which shall bind such Property in the hands of the Owner and such Owner's heirs, devisees, personal representatives, successors or assigns The aforesaid lien shall be superior to all other liens and charges against the said Property, except only for tax liens and all sums unpaid on mortgage liens or deed of trust liens of record, securing in either instance sums borrowed for the purchase or improvement of the Property in question The Association shall have the power to subordinate the aforesaid assessment lien to any other lien Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association To evidence the aforesaid assessment lien, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name

of the Owner of the Property covered by such lien and a description of the Property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent as set forth in Section 13.08 above and may be enforced by the foreclosure of the defaulting Owner's Property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessment to collect same and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the Property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any owner of, or any mortgagee holding a prior lien on, any part of the Property, the Association shall report to said Owner or Lender any unpaid assessments thereon remaining unpaid for longer than thirty (30) days after the same are due.

## **ARTICLE 14**

### **COMMITTEE**

#### **Designation of Committee**

14.01 The Association shall have a Committee, which shall consist of three (3) members who shall be natural persons and who shall be appointed by the Board. Until December 31, 2000, the appointment of the members of the Committee must be approved by Declarant, and any and all members of such Committee may be removed by the Board and/or Declarant with or without cause. After such date, the Board shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the Committee.

#### **Function of Committee**

14.02 No Improvement as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any portion of the Property until plans and specifications, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by such Committee. Assessments are to be current at time of such review. The Committee shall review plans and specifications submitted to it and such other information as it deems proper. The Committee shall have the power to employ appropriate personnel and agents, including professional consultants, to assist it in discharging its duties, and to require the payment by each applicant of a review fee to be set from time to time by the Committee for its reasonable costs and expenses of reviewing such plans and specifications, as a condition to review and approval of such plans and specifications. The decision of the Committee shall be final, conclusive and binding upon the applicant. If the Committee does not approve such plans and specifications, and revised plans and specifications are submitted, the Committee shall have the right to require the payment of a resubmittal fee to be set from time to time by the Committee for its reasonable costs and expenses for each resubmission as a condition to review and approval.

## **Content of Plans and Specifications**

14 03 The plans and specifications to be so submitted and approved shall include all items required to comply with the specifications of the City of Pflugerville for issuance of a building permit, including the following items unless waived by the Committee

(a) A topographical plat shall be submitted showing existing contour grades and showing the location and dimensions of all existing and proposed Improvements Existing and finished grades shall be shown at lot corners in areas of proposed grading improvements, and at comers of proposed Improvements Lot drainage provisions shall be indicated, as well as cut and fill details, if any appreciable chance in the lot contours is contemplated

(b) The structural design, exterior elevations, exterior materials, colors, textures and shapes of all Improvements shall be described, along with any diagrams or representations necessary to depict all proposed exterior illumination (including location and method), utility connections and fire protection systems

(c) Either with such plans or specifications, or within sixty (60) days after approval by the Committee of such plans and specifications, at the election of the applicant, the applicant shall submit to the Committee a landscaping plan drawn by a registered landscape architect, showing walkways, sidewalks, fences and walls, elevation changes, watering systems, vegetation and ground cover, parking area and driveway plan, screening (including size, shape, color, location and materials), reservoirs, detention ponds, drainage facilities, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, television or other utilities Upon submission, such landscaping plan shall be reviewed by the Committee under the terms and provisions hereof

Any approval by the Committee shall become void and of no force and effect after passage of time and expiration of any building permit issued by the City of Pflugerville with respect to the same plans and specifications

## **Definition of "Improvements"**

14 04 Improvement shall mean and include all buildings, structure, signs, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass and any new exterior construction or exterior improvement exceeding Five Thousand Dollars (\$5,000 00) in cost which may not be included in any of the foregoing It does not include garden shrub or tree replacements It does include both original improvements and all subsequent changes and improvements other than normal maintenance

## **Basis of Approval**

14 05 Approval of plans and specifications shall be based on adequacy of site dimensions, structural design, conformity and harmony of external design and location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites



and conformity to both the specific and general intent of these protective covenants and the general plan for development of the Property Upon request by an Owner following approval of submitted plans and specifications, the Committee shall issue a letter of approval to the Owner, referencing the plans and specifications so approved

### **Failure of the Committee to Act**

14 06 If the Committee fails to approve or to disapprove such plans and specifications or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Committee has approved such plans and specifications, except that the Committee has no right or power, either by action or failure to act, to waive or grant any variances specifically reserved to Declarant herein If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally and/or reject the balance

### **Limitation of Liability**

14 07 Neither Declarant, the Association, the Committee nor any of the members of the Committee or the Board shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Agreement by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specification

### **Other Building Requirements and Restrictions**

14 08 The Committee may, but is not required to do so, promulgate and make available to Owners of Lots within the Property an outline of applicable building standards which shall constitute guidelines only and shall not be binding upon the Committee

## **ARTICLE 15**

### **MISCELLANEOUS**

#### **Covenants Run With Land**

15 01 The covenants, restrictions, conditions, and provisions of this Agreement (whether affirmative or negative in nature)

- (a) Are made for the direct, mutual, and reciprocal benefit of each Lot in the Development
- (b) Constitute covenants running with the land

(c) Constitute and are enforceable as mutual equitable servitudes on each Lot in the Development in favor of every other Lot

(d) Bind every person having a fee, leasehold, or other interest in a Lot

(e) Inure to the benefit of the Owners and their respective successors and assigns

### **Not a Public Dedication**

15 02 Nothing contained in this Agreement may be deemed to be a gift or dedication of any portion of the Development to or for the general public or for any public purpose whatsoever. This Agreement is strictly limited to the purposes explicitly set forth here.

### **Severability**

15 03 If a provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining portions remain in full force and effect.

### **Notices**

15 04 All notices, statements, demands, requests, approvals, or other communications (collectively referred to as "notices") to be given under or pursuant to this Agreement must be in writing, addressed to the Persons at their respective addresses set forth below. Notices must be delivered in person, or by certified or registered mail, return receipt requested and postage prepaid. Notices are deemed given on the date personal delivery is made or, in the case of mailed notices, the date of delivery indicated on the requested return receipt. Notices to the following Persons must be sent to the following addresses unless and until such Person changes its address by written notice given to all other Owners:

Declarant     **NEW WELLS POINT PARTNERS, LTD.,**  
                  a Texas Limited Partnership  
                  c/o Spertus Management Company I, its General Partner  
                  Attn: Karen Burks, President  
                  Spertus Investments, L L C ,  
                  a Texas Limited Liability Corporation, Manager  
                  3321 Bee Caves Road, Suite 333  
                  Austin, Texas 78746

Any Person who becomes an Owner under and subject to this Agreement must give written notice of his, her, or its address to each of the other Owners.

### **Arbitration**

15 05 All disputes between two or more Owners concerning this Agreement or the Development must be resolved by arbitration. An Owner may request a meeting to be attended by all Owners for the purpose of resolving a dispute arising under this Agreement. If the matter

is not resolved at such meeting or the meeting is not attended by all Owners, any Owner may, within 15 days from the date set for such meeting, file a written request to resolve the dispute by arbitration. Within 30 days from the date of receipt of such notice, each Owner selects an arbitrator. The arbitrators must meet within 30 days after their selection for the purpose of resolving the dispute. If a majority of the arbitrators are unable to agree, an additional arbitrator must be selected by the agreement of the designated arbitrators. If the arbitrators are unable to select such an arbitrator, an arbitrator must be appointed by the Presiding Judge of the District Courts of Travis County, State of Texas, at the request of a Owner. Within 15 days from such appointment, all arbitrators shall meet, and the arbitration panel must resolve all questions in dispute between the Parties within 30 days from the date the additional arbitrator is selected. A majority decision is final and binding at any stage of the arbitration proceeding. Each Owner bears its own expenses, including its own selected arbitrator, except that the expenses relating to the selection and services of the additional arbitrator are borne equally by the Owners.

### **No Partnership or Joint Venture**

15 06 This Agreement may not be construed or deemed to create a relationship of partnership or joint venture among the Owners or between any of them.

### **Approvals**

15 07 Whenever the approval or consent of a Owner (an "approval") is required under this Agreement, the approval may not be unreasonably withheld except as otherwise provided in this Agreement. Unless this Agreement requires a particular approval to be made with a specific time period, the approval must be given within 15 days after the date of a written request for the approval. Except as otherwise provided in this Agreement, if an Owner fails to indicate, within the foregoing 15-day period, whether or not it approves of a particular matter, the Owner is deemed to have given its approval. If an Owner disapproves a particular matter, the reasons for the disapproval must be stated in writing.

### **Recordation**

15 08 A memorandum of this Agreement, in recordable form, may be executed and recorded by the Declarant concurrently with the execution of this Agreement.

### **Effective Date**

15 09 The effective date of this Agreement is the date on which it or the memorandum is recorded.

This Agreement and instrument is executed this 12<sup>th</sup> day of October, 1999

**DECLARANT:**

**NEW WELLS POINT PARTNERS, LTD.,**  
a Texas Limited Partnership

By Spertus Management Company I,  
Its General Partner

By Spertus Investments, L L C ,  
a Texas Limited Liability Corporation,  
as Manager

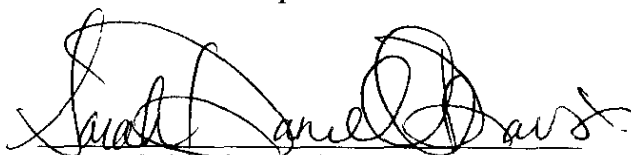
By   
Karen Burks, President

**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
                                          §  
COUNTY OF TRAVIS       §

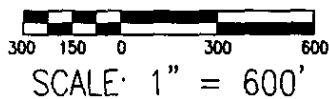
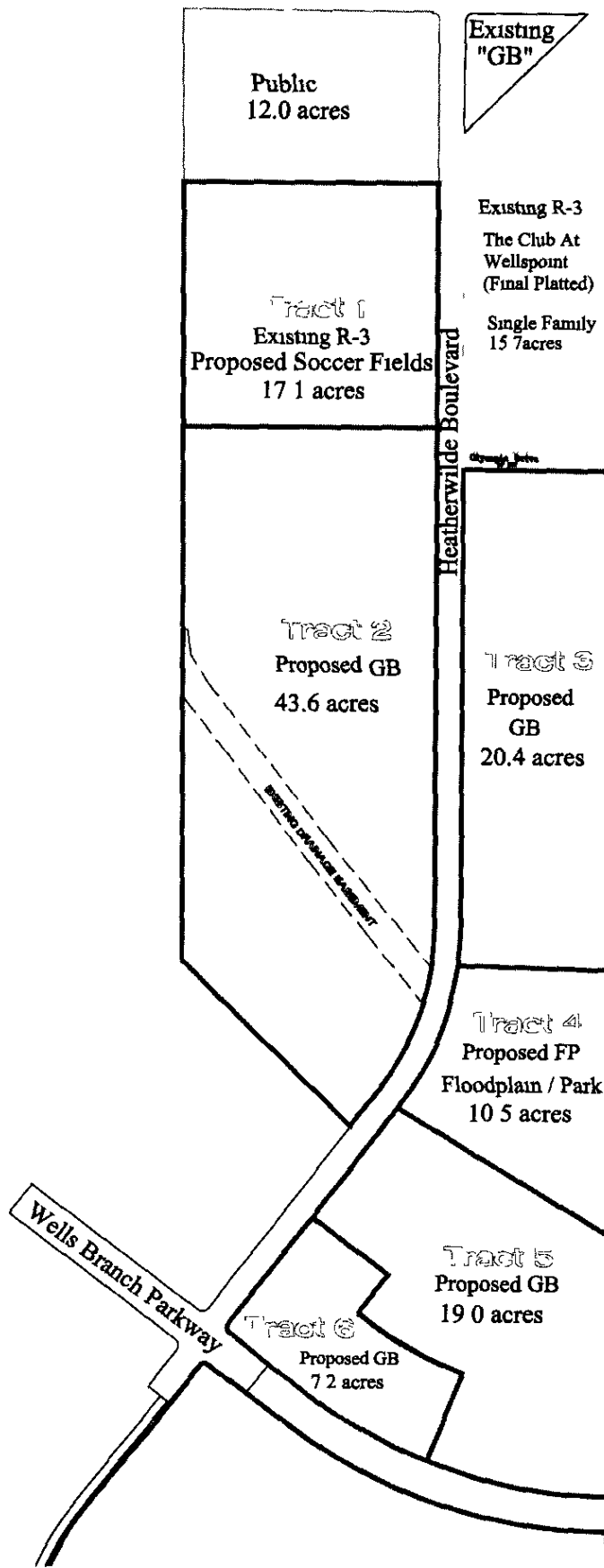
This instrument was acknowledged before me on October 12, 1999, by Karen Burks, President of Spertus Investments, L L C , a Texas Limited Liability Corporation, as Manager of Spertus Management Company I, General Partner of **NEW WELLS POINT PARTNERS, LTD.**, a Texas Limited Partnership, on behalf of said Limited Partnership.



  
Notary Public in and for the State of Texas

# Land Use Summary

Tract	Land Use	Acreage
1	Soccer Fields	17.1
2	Business/ Office	43.6
3	Business/ Office	20.4
4	Regional Detention	10.5
5	Business/ Office	19.0
6	Retail/ Office	7.2





**Professional Land Surveying, Inc.  
Surveying and Mapping**

*EXHIBIT "B"*

Office 512-476-7103

Fax 512-476-7105

510 South Congress Ave

Suite B-100

Austin, Texas 78704

**60 673 ACRE TRACT  
WELLS POINT**

A DESCRIPTION OF A 60 673 ACRE TRACT OF LAND IN THE L C CUNNINGHAM SURVEY NO 68, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 46 9486 ACRE TRACT OF LAND DESCRIBED IN VOLUME 11968, PAGE 1254 (TRACT 1) OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, BEING ALSO ALL OF A 25 7650 ACRE TRACT OF LAND DESCRIBED IN VOLUME 12041, PAGE 2828 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 60 673 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING at a 60d nail found for the southwest corner of the said 25 7650 acre tract, being also the most northern corner of an 8 996 acre tract described in Volume 10048, Page 845 of the Deed Records of Travis County, Texas, and being also in the east line of a 240 207 acre tract described in Volume 10048, Page 845 of the Deed Records of Travis County, Texas,

THENCE North 27°42'32" East with west line of the 25.7650 acre tract, and the east line of the said 240 207 acre tract a distance of 358.03 feet to a ½" rebar found at the northeast corner of the said 240.207 acre tract, being also the southeast corner of Lot 1, Block F of Springhill Village, a subdivision of record in Volume 7, Page 42 of the Plat Records of Travis County, Texas,

THENCE North 27°44'48" East, with the west line of the 25 7650 acre tract and the east line of said Springhill Village a distance of 650.26 feet to a ½" rebar found in the west line of the 46.9486 acre tract, being also the southeast corner of Lot 1, Block E of Springhill Village,

THENCE North 27°40'09" East, with the west line of the 46 9486 acre tract, being also the east line of Springhill Village, a distance of 723 56 feet to a ½" rebar with cap set,

THENCE North 27°41'18" East, with the west line of the 46 9486 acre tract, being also the east line of Springhill Village, a distance of 997 50 feet to a ½" rebar with cap set for the northwest corner of the herein described tract, same being the southwest corner of Lot 1, Block A, Spring Hill Elementary School, a subdivision of record in Volume 98, Page 15 of the Plat Records of Travis County, Texas;

THENCE South 62°09'25" East, with the north line of the herein described tract and the south line of said Lot 1, Spring Hill Elementary School a distance of 875.08 feet to a ½" rebar with cap set in the west right-of-way line of Heatherwilde Boulevard, being also the

east line of the 46 9486 acre tract, being also the southeast corner of said Lot 1, Spring Hill Elementary School,

THENCE with the east line of the 46 9486 acre tract herein described tract and the west right-of-way line of Heatherwilde Boulevard the following two (2) courses.


1. South 27°52'57" West a distance of 997.50 feet to a ½" rebar with cap set,
- 2 South 27°54'00" West a distance of 748 97 feet to a ½" rebar found for the southeast corner of the 46 9486 acre tract, being also the northeast corner of the 25 7650 acre tract;

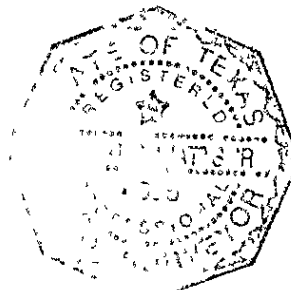
THENCE with the west right-of-way line of Heatherwilde Boulevard, being also the east line of the 25 7650 acre tract, the following three (3) courses:

- 1 South 27°53'19" West a distance of 862 81 feet to a ½" rebar with cap set,
2. Along a curve to the right, an arc length of 620 24 feet, having a radius of 955.00 feet and a chord which bears South 46°28'44" West a distance of 609 40 feet to a ½" rebar found,
- 3 South 65°07'11" West, a distance of 149 36 feet to a ½" rebar found for the most southern corner of the 25 7650 acre tract, being also in the east line of the said 8 996 acre tract,

THENCE North 17°23'24" West, with the west line of the 25 7650 acre tract, and the east line of the said 8 996 acre tract a distance of 818.25 feet to the POINT OF BEGINNING and containing 60 673 acres of land

Surveyed in the ground in April 1999 Bearing basis is Grid Azimuth for Texas Central Zone, 1983/93 HARN values from the LCRA control network Attachments Survey Drawing 143-10SK

  
Robert C. Watts, Jr.  
Registered Professional Land Surveyor  
State of Texas No 4995

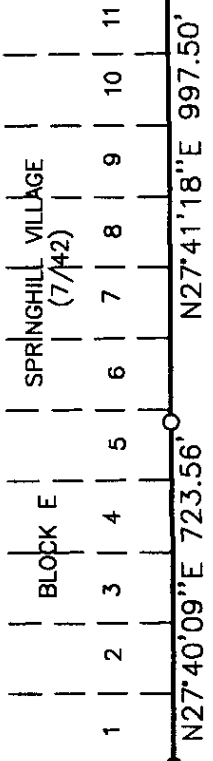


9.27.99

SPRING HILL  
ELEMENTARY SCHOOL  
98/15

APPARENT  
GAP 3.4'

S62°09'25"E 875.08'  
(S60°28'59"E 874.99')



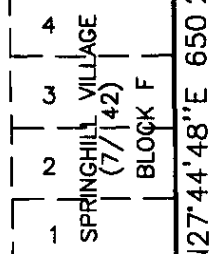
REM OF  
46 9486 AC  
11968/1254  
(TRACT 1)

60.673 ACRES

S27°52'57"W 997.50'  
(S29°31'01"W)

S27°54'00"W 748.97'

PATRICK PLACE  
(50' ROW)



25 7650 AC  
12041/2828

HEATHERWILDE BLVD.  
(STREET DEED - 11236/802)

S27°53'19"W 862.81'  
(S29°31'01"W 863.01')

REM OF 240.207 AC  
NEW FINLEY CO  
(10048/845)

P.O.B.

N17°23'24"W 818.25'  
(N15°46'13"W 818.19')

8 996 AC  
NEW FINLEY CO  
(10048/845)

LEGEND	
●	1/2" REBAR FOUND
○	1/2" REBAR WITH CAP SET
▲	60D NAIL FOUND

PROJECT NO 143-010  
DRAWING NO 143-10SK  
PLOT DATE. 09-25-99  
DRAWN BY. JBE

**Chaparral**

1" = 400'

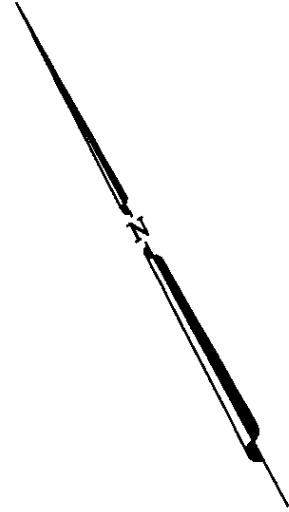




EXHIBIT "B"

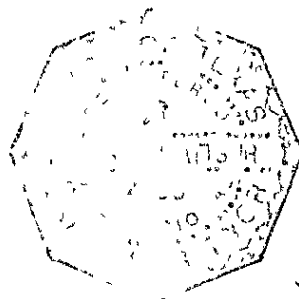
A SKETCH TO ACCOMPANY A DESCRIPTION OF A 60.673 ACRE TRACT OF LAND IN THE L.C. CUNNINGHAM SURVEY NO. 68, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 46.9486 ACRE TRACT OF LAND DESCRIBED IN VOLUME 11968, PAGE 1254 (TRACT 1) OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, BEING ALSO ALL OF A 25.7650 ACRE TRACT OF LAND DESCRIBED IN VOLUME 12041, PAGE 2828 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS.

NUMBER	DIRECTION	DISTANCE	(RECORD)
L1	S24°53'13"E	89.94'	
L2	S65°07'11"W	149.36'	(S66°43'10"W 149.34')
L3	N27°42'32"E	358.03'	
L4	S62°06'00"E	90.05'	

NUMBER	DELTA	CHORD BEARING	TAN	RADIUS	ARC	CHORD
C1	37°12'42"	S46°28'44"W	321.50	955.00	620.24	609.40

BEARING BASIS. GRID AZIMUTH FOR TEXAS CENTRAL ZONE, 1983/93 HARN VALUES FROM LCRA CONTROL NETWORK

ATTACHMENTS: METES AND BOUNDS DESCRIPTION



*Walter Walls*  
9-27-99

**Chaparral**



**Professional Land Surveying, Inc.  
Surveying and Mapping**

*EXHIBIT "B"*

Office 512-476-7103

Fax 512-476-7105

510 South Congress Ave

Suite B-100

Austin, Texas 78704

57 072 ACRE TRACT  
WELLS POINT

A DESCRIPTION OF A 57 072 ACRE TRACT IN THE L C CUNNINGHAM SURVEY NO 68, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 91 1530 ACRE TRACT OF LAND DESCRIBED IN VOLUME 12041, PAGE 2828 (TRACT TWO) OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND ALL OF LOT 1, BLOCK H, THE CLUB AT WELLS POINT PHASE A SECTION ONE, A SUBDIVISION OF RECORD IN VOLUME 93, PAGE 112 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID 57 072 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING at a ½" rebar found in the east right-of-way line of Heatherwilde Boulevard (90' wide right-of-way width) for the northwest corner of said Tract Two, and being also the southwest corner of said Lot 1,

THENCE North 27°54'03" East with the east right-of-way line of Heatherwilde Boulevard and the west line of said Lot 1 a distance of 711 16 feet to a ½" rebar found in the south right-of-way line of Olympic Drive (right-of-way varies), being also the north line of said Lot 1,

THENCE with the south right-of-way line of Olympic Drive and the north line of said Lot 1 the following four (4) courses:

1 Along a curve to the right, an arc length of 39 35 feet, having a radius of 25 00 feet and a chord which bears North 72°32'53" East a distance of 35 41 feet to a ½" rebar with cap set,

2 South 62°03'13" East a distance of 100 52 feet to a ½" rebar found,

3 Along a curve to the left, an arc length of 215.86 feet, having a radius of 745 00 and a chord which bears South 70°26'03" East a distance of 215 11 feet to a ½" rebar found,

4 South 78°53'19" East a distance of 172 71 feet to a ½" rebar found for the northeast corner of said Lot 1, being also the northwest corner of an 89 629 acre tract of land described in Volume 12537, Page 2389 of the Real Property Records of Travis County, Texas;

THENCE with the east line of said Lot 1 and the west line of the said 89 629 acre tract the following two (2) courses.

1 South 26°56'28" West a distance of 108.80 feet to an iron pipe found,

2 South 27°16'01" West a distance of 190.85 feet to an iron pipe found for the southwest corner of a 0.138 acre tract of land described in Volume 10530, Page 607 of the Deed Records of Travis County, Texas,

THENCE South 27°24'07" West with the east line of said Lot 1 and the west line of the said 89.629 acre tract a distance of 519.25 feet to a 60D nail found for the southeast corner of said Lot 1, being also the northeast corner of said Tract Two,

THENCE with the east line of Tract 2 and the west line of said 89.629 acre tract, the following three (3) courses:

1 South 27°12'05" West, a distance of 603.30 feet to a ½" iron pipe found,

2 South 31°34'10" West a distance of 78.63 feet to a ½" rebar with cap set,

3. South 27°41'44" West a distance of 106.36 feet to a ½" rebar found for the southwest corner of said 89.629 acre tract and the northwest corner of a 341.183 acre tract of land described in Volume 12729, Page 102 of the Deed Records of Travis County, Texas,

THENCE with the east line of Tract 2 and the west line of said 341.183 acre tract the following two (2) courses:

1 South 27°42'25" West, a distance of 1454.14 feet to a ½" rebar found,

2. South 27°55'56" West, a distance of 560.06 feet to a ½" rebar with cap set in the proposed north right-of-way line of Wells Branch Parkway (120' right-of-way width), from which an iron pipe found at the southeast corner of Tract 2 bears South 27°55'56" West, a distance of 769.60 feet,

THENCE with the proposed north right-of-way line of said Wells Branch Parkway the following three (3) courses:

1 North 62°15'24" West, a distance of 115.59 feet to a ½" rebar with cap set for a point of curvature;

2 Along a curve to the right having a radius of 1480.07 feet, an arc length of 963.72 feet, and a chord which bears North 43°36'12" West, a distance of 946.78 feet to a ½" rebar with cap set for a point of tangency;

3. North 24°56'59" West, a distance of 185.56 feet to a ½" rebar found at an angle point in the west line of Tract 2, being also the north line of Wells Branch Parkway,

THENCE with the west line of Tract 2, being also the north line of Wells Branch

Parkway, the following two (2) courses

1. North  $24^{\circ}50'25''$  West, a distance of 175 04 feet to a  $\frac{1}{2}$ " rebar found for a point of curvature,

2 Along a curve to the right having a radius of 25 00 feet, an arc length of 39 07 feet and chord which bears North  $19^{\circ}55'19''$  East, a distance of 35 22 feet to a  $\frac{1}{2}$ " rebar found in the east line of Heatherwilde Boulevard (right-of-way width varies),

THENCE with the west line of Tract 2, being also the east right-of-way line of Heatherwilde Boulevard, the following three (3) courses

1 North  $65^{\circ}05'25''$  East, a distance of 949 31 feet to a  $\frac{1}{2}$ " rebar found for a point of curvature,

2 Along a curve to the left having a radius of 1045 00 feet, an arc length of 678.69 feet and chord which bears North  $46^{\circ}29'08''$  East, a distance of 666 83 feet to a  $\frac{1}{2}$ " rebar with cap set for a point of tangency,

3 North  $27^{\circ}53'28''$  East, a distance of 862 54 feet to the POINT OF BEGINNING, containing 57.072 acres of land, more or less

Surveyed on the ground April 14, 1999 Bearing Basis: Grid Azimuth for the Texas Central Zone, NAD 1983/93 HARN values from the LCRA Control Network.  
Attachments Survey Drawing 143-1002

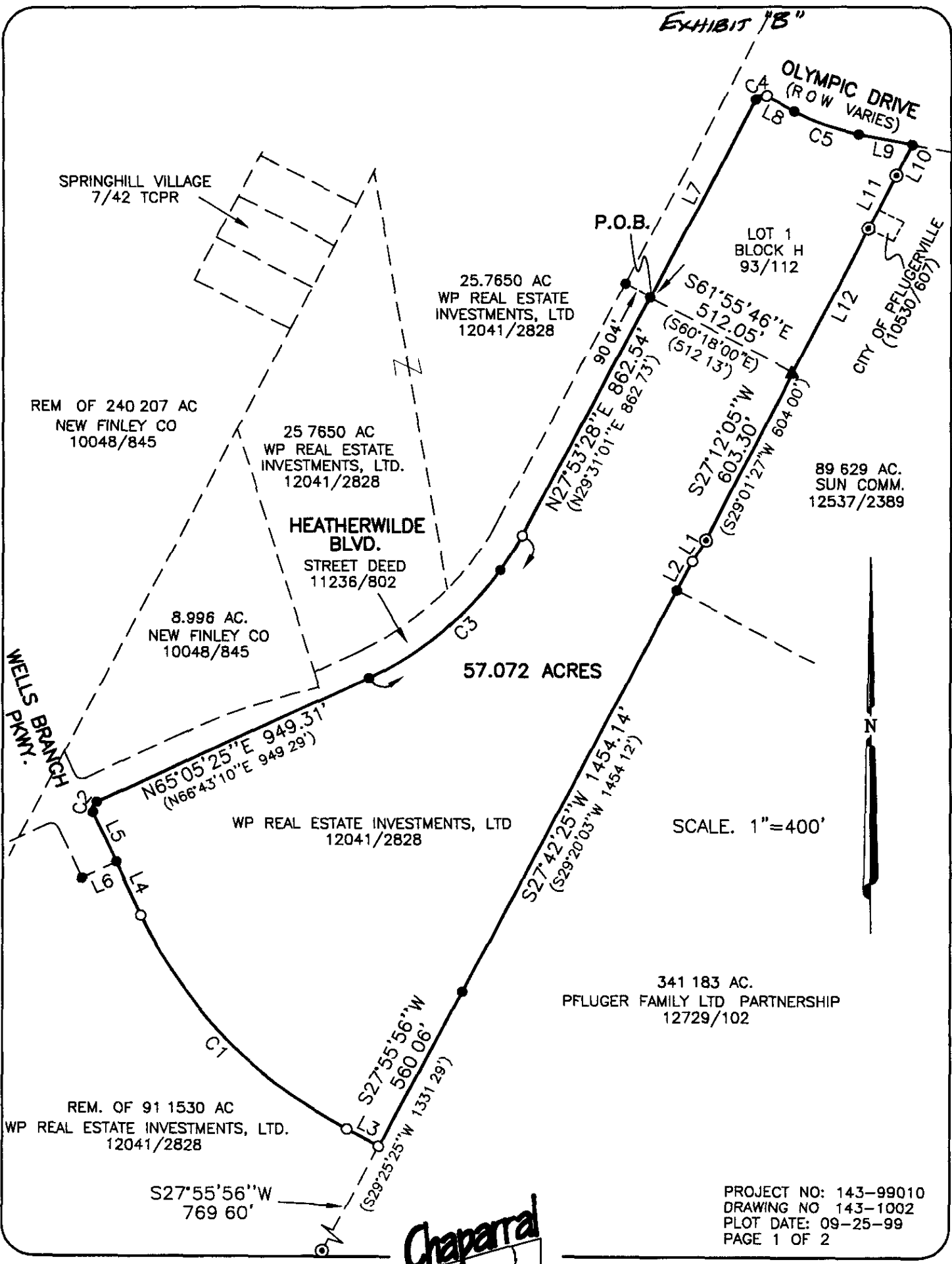
*Robert C. Watts, Jr.*

Robert C. Watts, Jr  
Registered Professional Land Surveyor  
State of Texas No. 4995



9-27-99

EXHIBIT 'B'



Chaparral

PROJECT NO: 143-99010  
DRAWING NO 143-1002  
PLOT DATE: 09-25-99  
PAGE 1 OF 2

EXHIBIT "B"

A SKETCH TO ACCOMPANY A DESCRIPTION OF A 57.072 ACRE TRACT OF LAND IN THE L.C. CUNNINGHAM SURVEY NO. 68, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 91.1530 ACRE TRACT OF LAND DESCRIBED IN VOLUME 12041, PAGE 2828 (TRACT TWO) OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND BEING ALL OF LOT 1, BLOCK H, THE CLUB AT WELLS POINT PHASE A SECTION ONE, A SUBDIVISION OF RECORD IN VOLUME 93, PAGE 112 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

NUMBER	DIRECTION	DISTANCE	(RECORD)
L1	S31°34'10"W	78.63'	(S31°42'38"W 77.79')
L2	S27°41'44"W	106.36'	(S29°21'17"W 106.31')
L3	N62°15'24"W	115.59'	
L4	N24°56'59"W	185.56'	
L5	N24°50'25"W	175.03'	(N23°16'10"W 175.02')
L6	S65°08'40"W	119.93'	
L7	N27°54'03"E	711.16'	(N29°31'01"E 711.23')
L8	S62°03'13"E	100.52'	(S60°28'59"E 100.71')
L9	S78°53'19"E	172.71'	(S77°05'03"E 172.72')
L10	S26°56'28"W	108.80'	(S28°42'33"W 108.20')
L11	S27°16'01"W	190.85'	
L12	S27°24'07"W	519.25'	(S28°56'44"W 519.37')

NO	DELTA	BEARING	TAN	RADIUS	ARC	CHORD	(RECORD)
C1	37°18'25"	N43°36'12"W	499.64	1480.07	963.72	946.78	
C2	89°33'15"	N19°55'19"E	24.81	25.00	39.08	35.22	(N21°43'30"E 35.35')
C3	37°12'42"	N46°29'08"E	351.80	1045.00	678.69	666.83	
C4	90°11'09"	N72°32'53"E	25.08	25.00	39.35	35.41	(N74°31'01"E 35.36')
C5	16°36'05"	S70°26'03"E	108.69	745.00	215.86	215.11	(S68°47'01"E 215.10')


LEGEND

- 1/2" REBAR W/ CAP SET
- 1/2" REBAR FOUND
- ▲ 60D NAIL FOUND
- ⊙ IRON PIPE FOUND

BEARING BASIS. GRID AZIMUTH FOR THE TEXAS CENTRAL ZONE, NAD 1983/93  
 HARN VALUES FROM THE LCRA CONTROL NETWORK  
 DATE OF SURVEY: 04/14/99

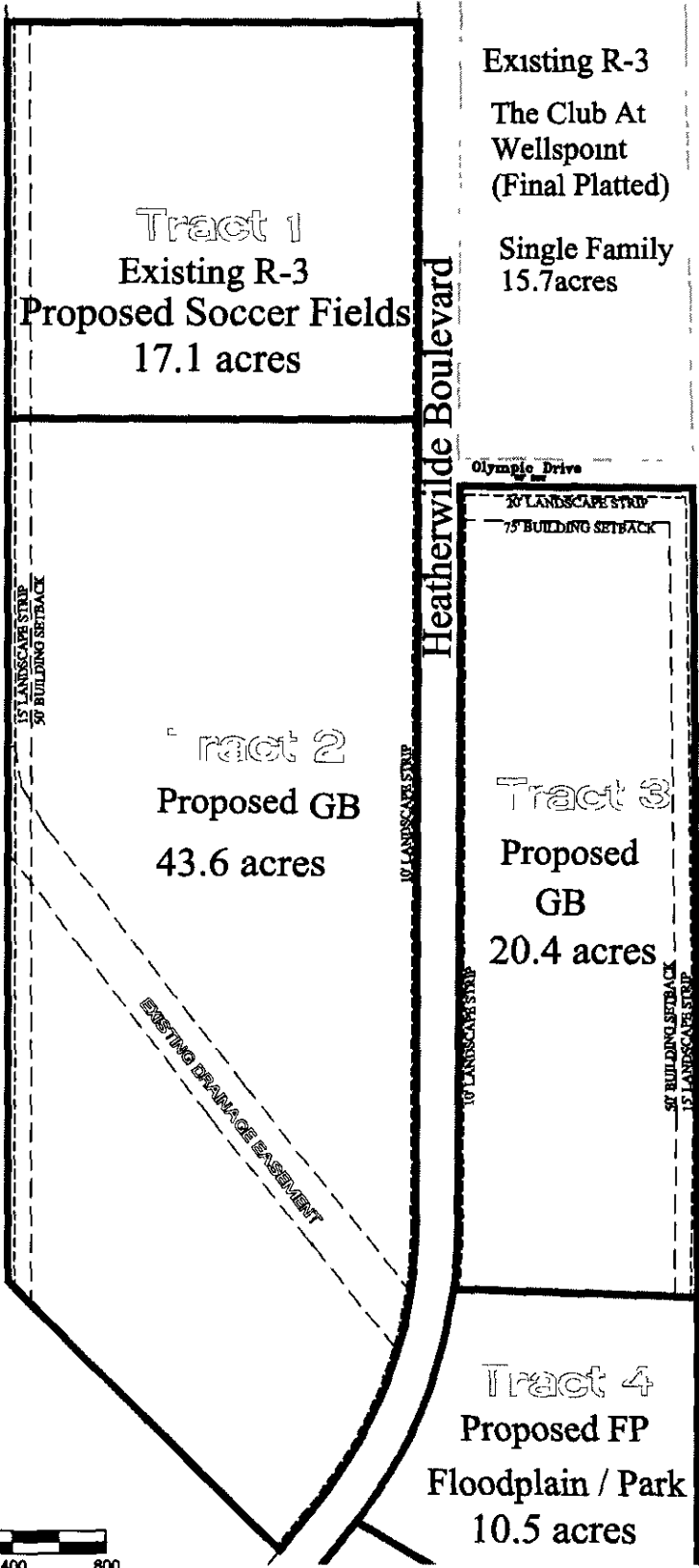
PROJECT NO 143-99010  
 DRAWING NO: 143-1002  
 PLOT DATE: 09-25-99  
 PAGE 2 OF 2

*Robert Walk*



9-27-99

**Chaparral**



Existing R-3

The Club At Wellspoint (Final Platted)

Single Family 15.7 acres

Tract 1  
Existing R-3  
Proposed Soccer Fields  
17.1 acres

Heatherwild Boulevard

Olympic Drive

10' LANDSCAPE STRIP  
75' BUILDING SETBACK

15' LANDSCAPE STRIP  
30' BUILDING SETBACK

Tract 2  
Proposed GB  
43.6 acres

10' LANDSCAPE STRIP

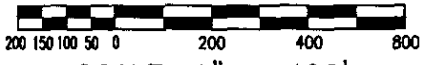
Tract 3  
Proposed GB  
20.4 acres

10' LANDSCAPE STRIP

50' BUILDING SETBACK  
15' LANDSCAPE STRIP

EXISTING DRAINAGE EASEMENT

Tract 4  
Proposed FP  
Floodplain / Park  
10.5 acres



SCALE: 1" = 400'

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

10-20-1999 11:31 AM 1999125530  
GUERRAY \$103.00  
Dana DeBeauvoir, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

Please return a ~~copy to:~~

Charles L Simon  
City of Pflugerville  
P O Box 589  
Pflugerville TX 78691

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