

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PFLUGERVILLE, TEXAS ACCEPTING A STORMWATER FACILITIES MAINTENANCE COVENANT, LICENSE AND AGREEMENT FOR ROWE EAST POND MAINTENANCE BETWEEN ROWE LAND DEVELOPMENT PARTNERS, LP (“OWNER”) AND THE CITY OF PFLUGERVILLE (“CITY”)

WHEREAS, the OWNER of the property possesses full authority to execute deeds, mortgages, and other covenants affecting the property and desires to enter into a Stormwater Facilities Maintenance Covenant, License and Agreement for Rowe East Pond Maintenance (“Agreement”), attached as **Exhibit “A”**, as required by the City of Pflugerville’s Code of Ordinances, including without limitation the Unified Development Code and associated Engineering Design and Construction Standards Manual, and the City’s Texas Commission on Environmental Quality-issued Municipal Separate Storm Sewer System (“MS4”) TPDES General Permit (TXR040000), collectively, the “Regulations”; and

WHEREAS, the OWNER acknowledges and agrees that, in order to ensure perpetual compliance with the Regulations, the property must be impressed with certain covenants and restrictions; and

WHEREAS, the Regulations generally and specifically require the design, construction and perpetual maintenance of permanent post construction storm water best management practices (“BMPs”) developed and included within a Storm Water Management Site Plan (“SWMSP”) required as a part of, and incident to, development, and OWNER acknowledges that compliance therewith by virtue of these Agreement; and

WHEREAS, the Agreement shall comply with all city standards and regulations and it shall be the OWNER’S responsibility to maintain the facilities in accordance with the Agreement; and

WHEREAS, the CITY is charged with the responsibility of protecting the public health, safety and welfare through implementation of storm water pollution prevention measures, including ensuring that SWMSPs are developed, and post construction storm water BMPs are implemented and perpetually maintained by property owners.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE:

The City Council of the City of Pflugerville hereby authorizes the City Manager to execute the Agreement and record said Agreement in the real property records of Travis County, Texas.

PASSED AND APPROVED this ___ day of August 2020.

Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

Exhibit A
Rowe East Pond Maintenance Agreement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STORM WATER FACILITIES MAINTENANCE COVENANT, LICENSE AND AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement (“Agreement”) is made by and between Rowe Land Development Partners, LP (“OWNER”) the owner of a tract of land being more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes (“PROPERTY”), and City of Pflugerville, Texas (“CITY”), collectively referred to herein as the Parties. For purposes of this Agreement, the term OWNER refers to the current owner of the PROPERTY, and the OWNER’s successors, heirs, and assigns.

WHEREAS, the OWNER of the PROPERTY possesses full authority to execute deeds, mortgages, and other covenants affecting the PROPERTY and desires to enter into this Agreement, as required by the City of Pflugerville’s Code of Ordinances, including without limitation the Unified Development Code and associated Engineering Design and Construction Standards Manual, and the City’s Texas Commission on Environmental Quality-issued Municipal Separate Storm Sewer System (“MS4”) TPDES General Permit (TXR040000), collectively, the “Regulations”; and

WHEREAS, the OWNER acknowledges and agrees that, in order to ensure perpetual compliance with the Regulations, the PROPERTY must be impressed with certain covenants and restrictions;

WHEREAS, the Regulations generally and specifically require the design, construction and perpetual maintenance of permanent post construction storm water best management practices (“BMPs”) developed and included within a Storm Water Management Site Plan (“SWMSP”) required as a part of, and incident to, development, and OWNER acknowledges that compliance therewith by virtue of this Agreement and the terms hereof shall enable OWNER to develop the PROPERTY, which is accepted in consideration of this Agreement; and

WHEREAS, the CITY is charged with the responsibility of protecting the public health, safety and welfare through implementation of storm water pollution prevention measures, including ensuring that SWMSPs are developed, and post construction storm water BMPs are implemented and perpetually maintained by property owners.

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the Parties hereto agree as follows:

1. **RECITALS INCORPORATED.** The above Recitals and all terms defined therein are incorporated into this Agreement for all purposes.
2. **DECLARATION OF COVENANTS AND RESTRICTIONS.** It is declared that the OWNER of PROPERTY, shall hold, sell and convey the PROPERTY, subject to the following covenants and restrictions (the “Restrictive Covenants”), which are impressed upon the PROPERTY by this Agreement. OWNER further declares that these Restrictive Covenants shall run with the land, and shall be binding upon the OWNER, its heirs, successors and assigns, and that each contract, deed or conveyance of any kind conveying all or a portion of the PROPERTY will conclusively be held to have been executed, delivered, and accepted subject to the following

covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance. The OWNER shall record this Agreement in the Official Land Records of Travis County, Texas.

(a) The OWNER covenants, declares and agrees that the OWNER shall perpetually preserve, protect, inspect and maintain the permanent post construction storm water BMPs developed by the OWNER in accordance with the SWMSP for the PROPERTY to ensure that the post construction storm water BMPs are and remain in proper condition in accordance with the SWMSP and the Regulations. The permanent post construction storm water BMPs specifically consist of those provided in **Exhibit B**, attached hereto and incorporated herein.

(b) The OWNER covenants and declares that OWNER shall maintain and inspect the permanent BMPs in accordance with the "Maintenance and Repair Plan" also provided in **Exhibit B**, and the Regulations. OWNER acknowledges and agrees that the Maintenance and Repair Plan may not be modified without the CITY Development Director's, or designee's, written consent, which shall not be unreasonably withheld, conditioned or delayed. OWNER acknowledges and agrees that the CITY is a beneficiary of OWNER's obligations under this Agreement and that failure to preserve, protect, inspect and maintain the post construction storm water BMPs is a breach of this Agreement.

(c) OWNER covenants and declares that any maintenance or repair needs identified by OWNER through periodic inspection shall be performed by the OWNER within thirty (30) days of discovery, or immediately upon written notification by the CITY. If maintenance and repair cannot be performed immediately upon written notification by the CITY, the OWNER shall provide CITY with a schedule of activities to be completed, which shall be completed within a reasonable time as agreed to by the Parties. In the event the work is not performed within the specified time, the OWNER acknowledges and agrees that the CITY, or its employees, agents or contractors, may enter the PROPERTY and complete the required maintenance, as determined necessary in the CITY's sole discretion, at the OWNER's sole cost and expense. In the event that immediate maintenance and repair is necessary to protect public health, safety or welfare, as determined in the CITY'S sole discretion, CITY may enter and complete such maintenance and repair without prior notice to the OWNER. The OWNER shall reimburse the CITY for the costs incurred for the maintenance of the post construction storm water BMPs immediately upon demand. OWNER further acknowledges and agrees that failure to reimburse CITY for all such costs shall be deemed a breach of this Agreement and will subject OWNER to all actions at law or in equity as the CITY may deem prudent, including without limitation, the placement of a judicially enforceable lien on the PROPERTY to secure the payment of all CITY costs incurred.

(d) The OWNER covenants, declares and agrees to modify or increase the inspection and maintenance or repair requirements, as deemed reasonably necessary by the CITY upon receipt of written notification thereof to OWNER, to ensure proper functioning and maintenance of the said post construction storm water BMP's.

(e) Notwithstanding anything in this Agreement to the contrary, OWNER acknowledges and agrees that the CITY is under no obligation to maintain or repair said post construction storm water BMP's, and in no event shall this Agreement be construed to impose any such obligation, duty or liability upon the CITY.

3. EASEMENT RESERVATION. OWNER hereby reserves a perpetual access and maintenance easement to all post construction storm water BMPs shown on the SWMSP for the purpose of inspection, repair and perpetual maintenance.

4. LICENSE. OWNER hereby GRANTS, SELLS AND CONVEYS TO CITY A NON-EXCLUSIVE IRREVOCABLE LICENSE OVER, UPON, ACROSS AND THROUGHOUT THE PROPERTY FOR ACCESS, INSPECTION AND MAINTENANCE OF THE POST CONSTRUCTION STORM WATER BMPs, AS APPLICABLE AND NECESSARY, UNTIL SUCH TIME AS THIS AGREEMENT IS MODIFIED, AMENDED OR TERMINATED AS PROVIDED HEREIN.

5. INDEMNIFICATION. In the event of the OWNER's failure to maintain the post construction storm water BMPs or OWNER's creation of a hazard, and the City's subsequent maintenance of the post construction storm water BMPs, the OWNER, whether one or more, shall be jointly and severally liable to the City for any reasonable expenses incurred by the City while maintaining the post construction storm water BMPs and, TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, OWNER, AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, SAVE HARMLESS, AND DEFEND THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL DEMANDS, LIABILITIES, CLAIMS, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND REASONABLE ATTORNEY'S FEES), WHICH CITY MAY HEREAFTER INCUR, BECOME RESPONSIBLE FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, OR ANY VIOLATION OF GOVERNMENTAL LAWS, REGULATIONS, OR RULES NOT RESULTING FROM THE CITY'S OWN NEGLIGENCE, BUT TO THE EXTENT CAUSED BY THE OWNER'S BREACH OF ANY WARRANTY, TERM OR PROVISION OF THIS AGREEMENT, OR ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE OWNER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THE PERFORMANCE, OR OMISSION, OF ANY ACT CONTEMPLATED BY THIS AGREEMENT.

6. GENERAL PROVISIONS.

(a) Severability. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this Agreement shall remain in full effect.

(b) Non-Waiver. If at any time the CITY fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

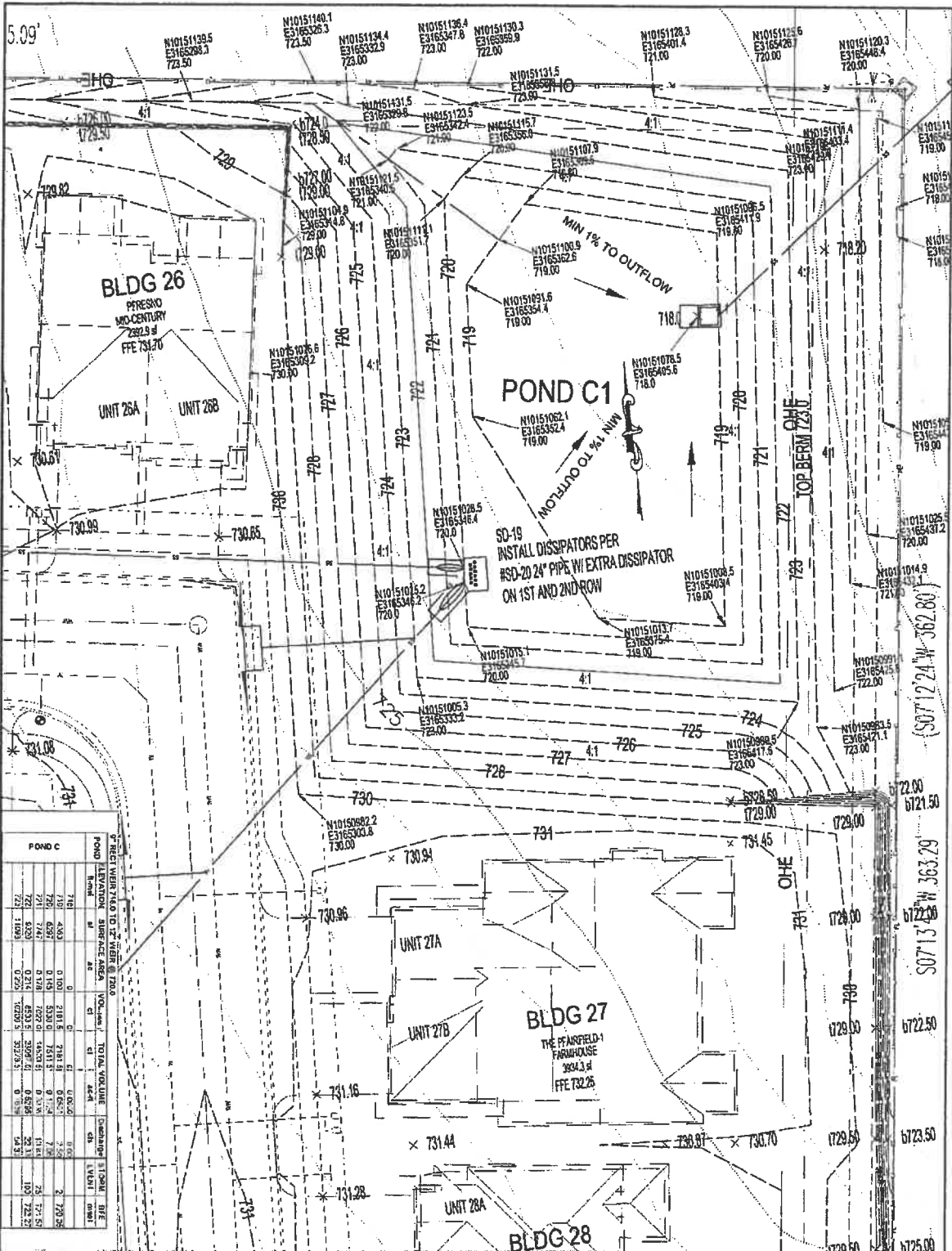
(c) Modification and Amendment. The Restrictive Covenants and License provided by this Agreement may be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Real Property Records of Travis County, Texas, executed, acknowledged, and approved by (a) the Director of Planning of the City of Pflugerville, or successor department; (b) by the owner(s) of the property subject to the modification, amendment or termination at the time of such modification, amendment or termination, and (c) any mortgagees holding first lien security interests on any portion of the PROPERTY.

(d) Assignment. It is currently anticipated that OWNER will establish a condominium regime on the PROPERTY and a condominium association (the "Association") will be created to administer the condominium regime. The CITY acknowledges and agrees that the rights and obligations of OWNER under this Agreement may be assigned by OWNER to the Association. Pursuant to such assignment, the Association shall assume all obligations of OWNER under this Agreement, OWNER shall be released from any obligations hereunder, and the CITY shall look solely to the Association for the performance of OWNER'S obligations hereunder. Additionally, upon such assignment, the consent of a majority of the board of directors of the Association shall be deemed the consent of the OWNER for purposes hereunder.

(e) Attorney's Fees. In the event the CITY brings an action or proceeding to enforce the terms hereof or declare rights hereunder, and is determined to be the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, CITY shall be entitled to reasonable attorneys' fees, costs and expert witness fees as the court shall determine. The term "Prevailing Party" shall mean a party who substantially obtains or defeats the relief sought, as the case may be, by the entering of a judgment or arbitration award in such party's favor.

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

Lot 1, Block A, Final Plat, The Rowe East, being 10.055 ACRES OF LAND OUT OF THE JACOB CASNER SURVEY NO. 9, ABSTRACT NO. 2753 IN TRAVIS COUNTY, TEXAS AND BEING COMPRISED ALL OF THAT CERTAIN (5.049 ACRE) TRACT OF LAND IDENTIFIED AS TRACT 2, TOGETHER WITH ALL OF THAT CERTAIN (5.006 ACRE) TRACT OF LAND IDENTIFIED AS TRACT 4, BOTH AS CONVEYED TO TIEMANN LAND AND CATTLE DEVELOPMENT, INC. BY DEED RECORDED IN DOCUMENT NO. 2017060975 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS:



POND	ELEVATION	SURFACE AREA	TOTAL VOLUME		CUMULATIVE STORAGE	LIFTING	BIF
			CU YD	CU FT			
718	638	0.10	0.00	0.00	0.00	0.00	0.00
719	637	0.10	0.10	0.10	0.10	0.10	0.10
720	636	0.10	0.20	0.20	0.20	0.20	0.20
721	635	0.10	0.30	0.30	0.30	0.30	0.30
722	634	0.10	0.40	0.40	0.40	0.40	0.40
723	633	0.10	0.50	0.50	0.50	0.50	0.50
724	632	0.10	0.60	0.60	0.60	0.60	0.60
725	631	0.10	0.70	0.70	0.70	0.70	0.70
726	630	0.10	0.80	0.80	0.80	0.80	0.80
727	629	0.10	0.90	0.90	0.90	0.90	0.90
728	628	0.10	1.00	1.00	1.00	1.00	1.00
729	627	0.10	1.10	1.10	1.10	1.10	1.10
730	626	0.10	1.20	1.20	1.20	1.20	1.20
731	625	0.10	1.30	1.30	1.30	1.30	1.30
732	624	0.10	1.40	1.40	1.40	1.40	1.40
733	623	0.10	1.50	1.50	1.50	1.50	1.50
734	622	0.10	1.60	1.60	1.60	1.60	1.60
735	621	0.10	1.70	1.70	1.70	1.70	1.70
736	620	0.10	1.80	1.80	1.80	1.80	1.80
737	619	0.10	1.90	1.90	1.90	1.90	1.90
738	618	0.10	2.00	2.00	2.00	2.00	2.00
739	617	0.10	2.10	2.10	2.10	2.10	2.10
740	616	0.10	2.20	2.20	2.20	2.20	2.20
741	615	0.10	2.30	2.30	2.30	2.30	2.30
742	614	0.10	2.40	2.40	2.40	2.40	2.40
743	613	0.10	2.50	2.50	2.50	2.50	2.50
744	612	0.10	2.60	2.60	2.60	2.60	2.60
745	611	0.10	2.70	2.70	2.70	2.70	2.70
746	610	0.10	2.80	2.80	2.80	2.80	2.80
747	609	0.10	2.90	2.90	2.90	2.90	2.90
748	608	0.10	3.00	3.00	3.00	3.00	3.00
749	607	0.10	3.10	3.10	3.10	3.10	3.10
750	606	0.10	3.20	3.20	3.20	3.20	3.20
751	605	0.10	3.30	3.30	3.30	3.30	3.30
752	604	0.10	3.40	3.40	3.40	3.40	3.40
753	603	0.10	3.50	3.50	3.50	3.50	3.50
754	602	0.10	3.60	3.60	3.60	3.60	3.60
755	601	0.10	3.70	3.70	3.70	3.70	3.70
756	600	0.10	3.80	3.80	3.80	3.80	3.80
757	599	0.10	3.90	3.90	3.90	3.90	3.90
758	598	0.10	4.00	4.00	4.00	4.00	4.00
759	597	0.10	4.10	4.10	4.10	4.10	4.10
760	596	0.10	4.20	4.20	4.20	4.20	4.20
761	595	0.10	4.30	4.30	4.30	4.30	4.30
762	594	0.10	4.40	4.40	4.40	4.40	4.40
763	593	0.10	4.50	4.50	4.50	4.50	4.50
764	592	0.10	4.60	4.60	4.60	4.60	4.60
765	591	0.10	4.70	4.70	4.70	4.70	4.70
766	590	0.10	4.80	4.80	4.80	4.80	4.80
767	589	0.10	4.90	4.90	4.90	4.90	4.90
768	588	0.10	5.00	5.00	5.00	5.00	5.00
769	587	0.10	5.10	5.10	5.10	5.10	5.10
770	586	0.10	5.20	5.20	5.20	5.20	5.20
771	585	0.10	5.30	5.30	5.30	5.30	5.30
772	584	0.10	5.40	5.40	5.40	5.40	5.40
773	583	0.10	5.50	5.50	5.50	5.50	5.50
774	582	0.10	5.60	5.60	5.60	5.60	5.60
775	581	0.10	5.70	5.70	5.70	5.70	5.70
776	580	0.10	5.80	5.80	5.80	5.80	5.80
777	579	0.10	5.90	5.90	5.90	5.90	5.90
778	578	0.10	6.00	6.00	6.00	6.00	6.00
779	577	0.10	6.10	6.10	6.10	6.10	6.10
780	576	0.10	6.20	6.20	6.20	6.20	6.20
781	575	0.10	6.30	6.30	6.30	6.30	6.30
782	574	0.10	6.40	6.40	6.40	6.40	6.40
783	573	0.10	6.50	6.50	6.50	6.50	6.50
784	572	0.10	6.60	6.60	6.60	6.60	6.60
785	571	0.10	6.70	6.70	6.70	6.70	6.70
786	570	0.10	6.80	6.80	6.80	6.80	6.80
787	569	0.10	6.90	6.90	6.90	6.90	6.90
788	568	0.10	7.00	7.00	7.00	7.00	7.00
789	567	0.10	7.10	7.10	7.10	7.10	7.10
790	566	0.10	7.20	7.20	7.20	7.20	7.20
791	565	0.10	7.30	7.30	7.30	7.30	7.30
792	564	0.10	7.40	7.40	7.40	7.40	7.40
793	563	0.10	7.50	7.50	7.50	7.50	7.50
794	562	0.10	7.60	7.60	7.60	7.60	7.60
795	561	0.10	7.70	7.70	7.70	7.70	7.70
796	560	0.10	7.80	7.80	7.80	7.80	7.80
797	559	0.10	7.90	7.90	7.90	7.90	7.90
798	558	0.10	8.00	8.00	8.00	8.00	8.00
799	557	0.10	8.10	8.10	8.10	8.10	8.10
800	556	0.10	8.20	8.20	8.20	8.20	8.20

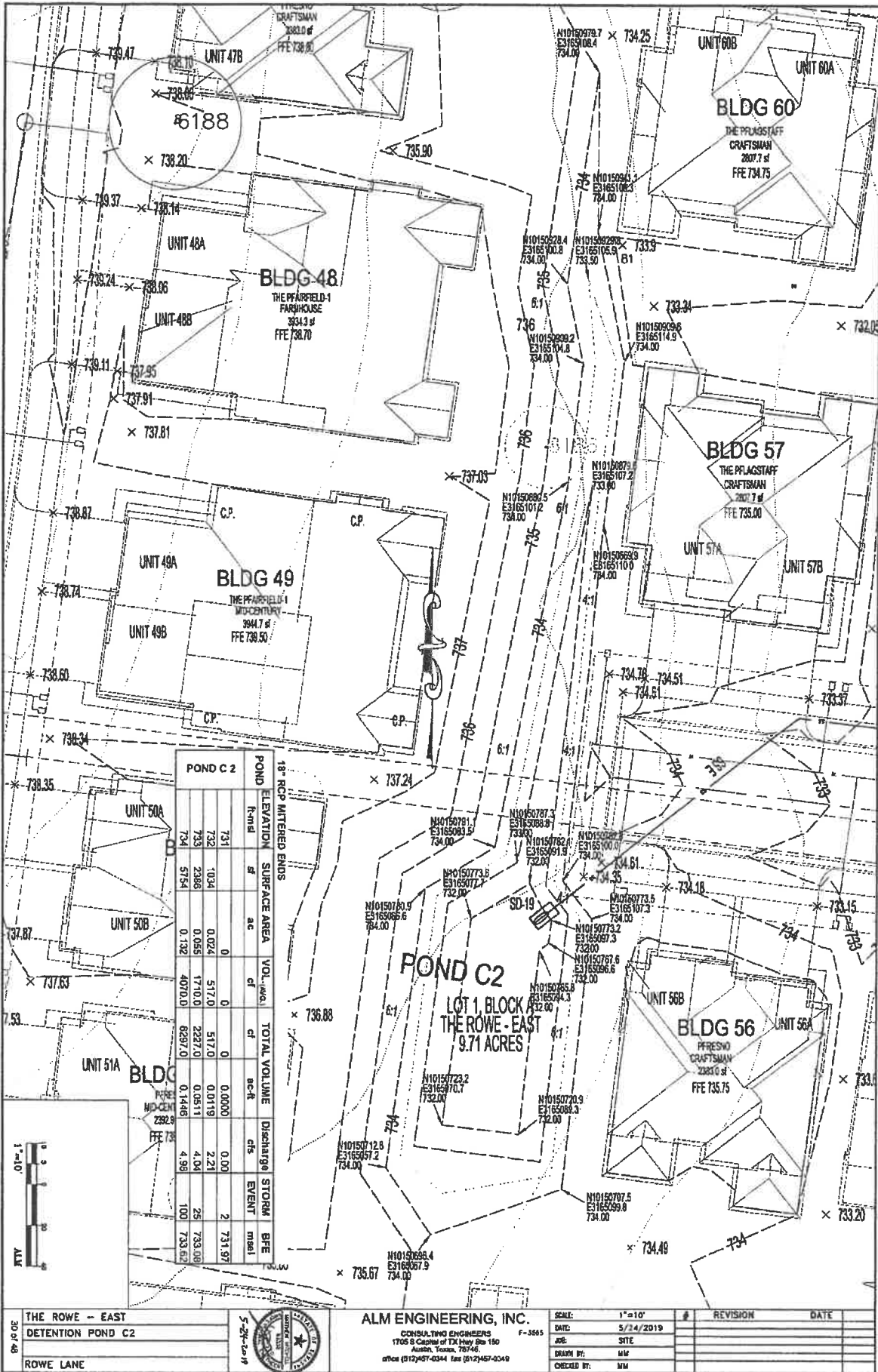
THE ROWE - EAST
DETENTION POND C1

ROWE LANE

ALM ENGINEERING, INC.
CONSULTING ENGINEERS
1705 S Capital of TX Hwy Ste 180
Austin, Texas, 78748
office (512)457-0244 fax (512)457-0249

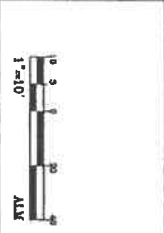
SCALE: 1"=10'
DATE: 5/26/2019
JOB: SITE
DRAWN BY: MM
CHECKED BY: MM

#	REVISION	DATE



18" RCP MITERED ENDS

POUND	ELEVATION	SURFACE AREA	VOL. (cu ft)	TOTAL VOLUME	DISCHARGE	STORM	BFE
ft-mil	ft	sq ft	cu ft	cu ft	cfs	event	ft
731	0	0	0	0	0.000	2	731.97
732	1034	0.024	517.0	517.0	0.0119	2.21	733.00
733	2386	0.051	1710.0	2227.0	0.0311	4.04	733.00
734	5754	0.132	4070.0	6297.0	0.1446	4.98	733.62



THE ROWE - EAST
DETENTION POND C2
ROWE LANE



ALM ENGINEERING, INC.
CONSULTING ENGINEERS
1705 S Capital of TX Hwy Bldg 150
Austin, Texas, 78746
office (512)497-0344 fax (512)467-0349

SCALE:	#	REVISION	DATE
1"=10'			
DATE:			5/24/2019
JOB:			SITE
DRAWN BY:			MM
CHECKED BY:			MM

EXHIBIT B
PERMANENT STORMWATER MAINTENANCE PLAN

The permanent post construction storm water BMPs addressed by this Maintenance and Repair Plan include the following, as shown on the Storm Water Management Site Plan (SWMSP):

1. Detention Pond area will be mowed bi-annually and the berm and pond wall will be inspected annually. Detention Pond area will be reseeded and irrigated as necessary such that adequate vegetative cover is maintained in accordance with City standards. Sediment buildup along the trickle channel and outflow will be removed when it exceeds 6 inches of depth and any areas of erosion repaired.
2. Cracks, voids, or undermining of structural elements must be repaired in order to prevent structural damage.
3. The owner shall provide an annual report to the city's development services center on or before December 31st of each subsequent year specifically detailing the inspection and maintenance obligations undertaken to maintain the facilities during the current calendar year.
4. OWNER reserves the right to relocate the Detention Pond area upon CITY approval and development permit issuance for the new Detention Pond location and design.

After recording, return to:

City of Pflugerville
Office of Development Services
201 E. Pecan St. Bldg. B
Pflugerville, TX. 78660

Attn: Manny Duarte

LIENHOLDER CONSENT AND SUBORDINATION

FC-V FINANCIAL, L.P., a Delaware limited partnership being the sole beneficiary of a mortgage lien and other liens, assignments and security interests encumbering all or a portion of the Property hereby consents to the terms and provisions of the Stormwater Facilities Maintenance Covenant, License and Agreement to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien document and any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Stormwater Facilities Maintenance Covenant, License and Agreement, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under this Stormwater Facilities Maintenance Covenant, License and Agreement. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

FC-V FINANCIAL, L.P., a Delaware limited partnership

By: FC-V MGMT, LLC, a Texas limited liability Company, its General Partner

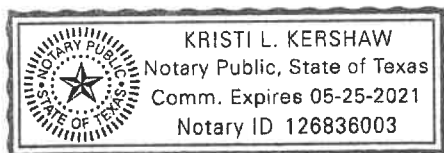
By: [Signature]
Name: Todd Aiken
Title: EVP

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, Kristi Kershaw, on this day personally appeared Todd Aiken, Executive Vice President of FC-V MGMT LLC, a Texas limited liability company, General Partner of FC-V Financial, L.P., a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 12 day of August, 2020.

[S E A L]



[Signature]
Notary Public in and for the State of Texas