

**AGREEMENT REGARDING WHOLESALE
WASTEWATER SERVICE**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT REGARDING WHOLESALE WASTEWATER SERVICE (“Agreement”) is made by and between the City of Pflugerville, a Texas home rule city (“Pflugerville”); and Windermere Utility Company, Inc., a utility company organized under the laws of the State of Texas (“Windermere”), and is made effective on the Effective Date, as hereinafter defined.

RECITALS

A. M33 Development Corp., a Texas corporation, Pflugerville Pfairway Office Park, L.P., a Texas limited partnership and North Shoal Creek Commercial, Ltd., a Texas limited partnership (the “Owners”), own those four (4) certain tracts of land containing a total of approximately 67.738 acres, more or less (the “Owner Tracts”) located in the wastewater service area of Windermere (“Service Area”) as such Owner Tracts are more particularly shown on Exhibit “A” attached hereto and incorporated by reference for all purposes.

B. The Owner Tracts are located in a portion of the Service Area not currently in proximity to Windermere’s wastewater facilities but in reasonable proximity to the wastewater facilities of Pflugerville.

C. Windermere does not desire, at this time, to construct the utility infrastructure within and across the Service Area necessary to provide wastewater service to the Owner Tracts.

D. Wilke Lane Utility Company provides wholesale wastewater treatment services to Pflugerville under that certain Agreement for Providing Wholesale Wastewater Service dated September 20, 1995 (“Wilke Contract”), as amended.

E. Pflugerville is willing to use its rights under the Wilke Contract and its retail wastewater collection system to provide wholesale wastewater service to Windermere for service to the Owner Tracts until such time as Windermere may construct infrastructure sufficient to connect the Owner Tracts to the remainder of Windermere’s wastewater systems.

F. Pflugerville and Windermere desire to set forth in writing the terms and conditions for wastewater service from Pflugerville to the Owner Tracts.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the parties set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

I.

**WHOLESALE WASTEWATER
SERVICE FROM PFLUGERVILLE FOR OWNER TRACTS**

1.01 Agreement to Provide Wholesale Wastewater Service. Subject to the terms and conditions of this Agreement, Pflugerville agrees to provide wholesale wastewater service to Windermere for the Owner Tracts under its wholesale agreement with Wilke Lane Utility Company. Wastewater treatment is anticipated to occur at the Wilke Lane wastewater plant. Subject to the terms and conditions of this Agreement, the Owners consent to the provision of wholesale wastewater service from Pflugerville to Windermere for the Owner Tracts (the "Service").

1.02 Description of Property to Receive Service from Pflugerville. The Service provided under this Agreement shall be limited to the four (4) tracts of land containing a total of approximately 67.738 acres, more or less, described above as the Owner Tracts and depicted on Exhibit "A" attached hereto.

1.03 Maximum Limit of Service From Pflugerville. The Service from Pflugerville to Windermere for the Owner Tracts will be limited to a maximum of 145 Living Unit Equivalents. As utilized herein, the term "Living Unit Equivalent" or "LUE" means one single-family residential unit, or its equivalent, calculated at the rate of 350 gallons of potable water per day and 350 gallons of wastewater per day based on a thirty (30) day average. Nothing herein shall prevent the parties from contracting for or agreeing to additional wastewater service pursuant to separate written agreements.

1.04 Minimum Criteria for Service. Wastewater service provided by Pflugerville to Windermere for the Owner Tracts shall be sufficient to collect, transport and treat all wastewater from the Owner Tracts subject to the maximum capacity limitation set forth in Section 1.03 above and the further terms and conditions of this Agreement.

1.05 Use of Owner Tracts. The Owner Tracts will be limited to residential uses and commercial uses that do not generate industrial waste as defined in 40 C.F.R. Part 403 and Chapter 18-2, Austin City Code, and the Owners will be required to restrict the Owner Tracts to such uses in accordance with Article IV of this Agreement.

1.06 Points of Connection for Service. To provide the Service, Pflugerville wastewater facilities shall be connected to the wastewater facilities of Windermere at the agreed points of connection (the "Points of Connection") shown on Exhibit "B" attached hereto and incorporated by referenced herein for all purposes. The Points of Connection may be changed or new Points of Connection added by written amendment of this Agreement approved by Pflugerville and Windermere.

1.07 Manner of Connection. The Windermere internal wastewater facilities constructed to serve the Owner Tracts (the "Internal Facilities") will be connected to the Pflugerville wastewater facilities by the Owners' construction of the Interconnect Facilities in the appropriate location shown on Exhibit "B" ("Interconnect Facilities"). Windermere will ensure that the Interconnect Facilities and Internal Facilities are constructed by the Owners in compliance with applicable regulations and construction standards of Windermere, Pflugerville

and the TCEQ. In the event that there is any conflict between these regulations, standards and specifications, the more stringent regulations, standards and specifications will apply.

1.08 Approval of Plans and Specifications. Before the commencement of construction, Windermere will require the Owners to prepare and submit to Windermere and Pflugerville detailed plans and specifications for the Interconnect Facilities and Internal Facilities to be constructed within the Owner Tracts. Review and approval of the plans and specifications by Pflugerville and Windermere and all other agencies of relevant jurisdiction is required before the commencement of construction of the Interconnect Facilities or the Internal Facilities.

1.09 Easements. Windermere will ensure that the Internal Facilities and appurtenances within the Owner Tracts are constructed within public rights-of-way or easements dedicated to Windermere and Pflugerville that are of standard dimensions and legally sufficient to allow for the lawful construction, operation, maintenance, upgrade, repair, and removal of such facilities and adequate ingress and egress for such purposes. Windermere and Pflugerville agree that the form and substance of easements for the Internal Facilities are subject to review and approval by the City Attorney of Pflugerville or his designee and Windermere's legal counsel before the execution of same or filing in the official public records of Travis County, Texas.

1.10 Inspection of Interconnect Facilities and Internal Facilities Within Owner Tracts. Windermere will inspect the Interconnect Facilities as well as the Internal Facilities constructed within the Owner Tracts to ensure their construction in accordance with the requirements of this Agreement and applicable regulations and construction standards of Windermere and TCEQ. Pflugerville shall inspect the Interconnect Facilities and may inspect the Internal Facilities to ensure their compliance with the requirements of this Agreement and applicable regulations and construction standards of Pflugerville.

1.11 Ownership, Operation and Maintenance of Internal Facilities. Windermere will require the Owners to dedicate the Internal Facilities to Windermere for operation and maintenance concurrent with the inspection and final acceptance of same.

1.12 Windermere and Pflugerville Fees. Except as otherwise set forth in this Agreement, the Owners shall be required to pay all applicable Pflugerville and Windermere inspection fees, plan review fees and other fees and charges for services, labor and materials provided by Pflugerville and Windermere, respectively, in aid of the provision of Service under this Agreement. Capital recovery fees will be collected and paid as described in Article II of this Agreement.

1.13 Access to Interconnect Facilities. Although the Interconnect Facilities shall be dedicated to Pflugerville by the Owners for operation and maintenance, Windermere will have access to and the right to inspect the Interconnect Facilities at all times.

1.14 Monthly Billing. Wastewater billings during the provision of Service will be determined based on the number of wastewater LUEs connected to the Internal Facilities.

(a) Each monthly bill shall contain a statement of the number of LUEs connected during the billing period, the rate on which the bill is calculated and any other fees or administrative charges included in the bill. Pflugerville's wholesale wastewater rates are subject

to change from time to time by the Pflugerville City Council as contemplated under the Wilke Contract. Windermere will make payment to Pflugerville in accordance with Pflugerville's utility service requirements and regulations as amended from time to time.

(b) In the future, Pflugerville may calculate its bill to Windermere for the wastewater service in each billing cycle based on the water usage data derived from monthly water meter readings within the Owner Tracts and Pflugerville's wholesale wastewater rate in effect at the time of each billing, subject to any adjustment for Windermere's winter averaging methodology. Windermere shall calculate the appropriate winter average for each customer, based upon billing date provided by Pflugerville, and provide that information to Pflugerville annually. Each monthly wastewater use bill will contain a statement of water used during the billing period, the wholesale wastewater rate on which the bill is calculated, any winter averaging adjustment, and any other fees or administrative charges included in the bill. Pflugerville's wholesale wastewater rates may be subject to change from time to time by the Pflugerville City Council. Provided however that the initial rate under this agreement is \$26.50 per LUE per month, as set forth below, and this initial rate may not be changed prior to January 31, 2006.

(c) The City shall bill and collect for retail wastewater services from Windermere's retail customers, at rates and charges set by Windermere's tariff for retail customers. The City will resolve billing disputes with individual Windermere customers consistent with its in-city procedures and the requirements and provisions of any and all laws, statutes, the rules and regulations imposed by any local, state or federal agency or any other political entity relating to the operation of a wastewater collection system, including the Texas Commission on Environmental Quality ("TCEQ") and the certificate of convenience and necessity and tariff held by Windermere. The City will remit to Windermere on a monthly basis an amount equal to the monthly amounts billed to Windermere's customers by the City less \$1.50 per month for each LUE that is served by the System for billing services rendered under this Agreement and less \$25.00 per month per LUE billed for wastewater service provided by the City under this Agreement. Except as provided in (b) above, these amounts are subject to change from time to time by the Pflugerville City Council.

1.15 Pflugerville Policies and Ordinances Applicable to Service. Unless otherwise provided in this Agreement, the Service provided from Pflugerville to the Owner Tracts under this Agreement shall not be unreasonably discriminatory and shall be consistent with the policies and ordinances of Pflugerville applicable to wholesale wastewater service. The Service may be limited or curtailed or limited in the same manner and proportion as such service is curtailed or limited to other customers of Pflugerville.

1.16 Service Not Assignable or Transferable. The Service described in this Agreement shall not be assignable, in whole or in part, for use by any other property.

II.

CAPITAL RECOVERY FEES; CAPACITY FOR PFLUGERVILLE TRACT

2.01 Pflugerville Capital Recovery Fees for Owner Tracts. Pflugerville will collect from the Owners Pflugerville's Wastewater Capital Recovery Fee for all wastewater connections

within the Owner Tracts at the time building permits are issued for construction on the Owner Tracts.

III.

TERM AND TERMINATION

3.01 Term. Unless terminated by mutual agreement of the parties hereto, this Agreement will continue in full force and effect for a period of twenty (20) years from the Effective Date hereof. Pflugerville agrees to provide direct retail service to the Owner Tracts beginning any time prior to the expiration of this Agreement upon receipt of a written request from Windermere together with all necessary billing information for any customers within the Owner Tracts, provided that the transfer of such retail service is accomplished at no cost to Pflugerville.

3.02 Remedies Upon Default. It is not intended hereby to specify (and this Agreement will not be considered as specifying) an exclusive remedy for a default by any party hereunder, but all remedies existing at law or in equity, including specific performance and mandamus, will be cumulative and available to the non-defaulting party in the event of a default by any other party as to its duties or obligations hereunder.

3.03 No Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or of performance by any other party of any duty or obligation hereunder shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

IV.

OBLIGATIONS OF OWNERS

4.01 Agreements of Owners. As consideration for this Agreement and the services to be received for the Owner Tracts hereunder, Windermere shall enter into a retail service agreement with the Owners, or their successors, that obligates the Owners to all of the provisions of this Agreement affecting the Owner Tracts, including the following covenants:

(a) The Owner Tracts are hereby restricted so that the same may be used and improved solely for residential uses and commercial uses that generate only normal domestic wastewater, as determined by applicable policies and regulations of Pflugerville. No industrial uses will be permitted. Notwithstanding any provision herein to the contrary, however, no owner of any portion of the Owner Tracts will be responsible or liable for any breach or violation of the restrictive covenants set forth hereunder which occurs outside of the portion of the Owner Tracts owned by such owner.

(b) The Owners will file this Agreement of record in the Official Public Records of Travis County, Texas, and will provide a copy of the recorded, file-stamped Agreement to Pflugerville and Windermere. No services will be provided hereunder until this Agreement is recorded and a copy of the Agreement, bearing the recording information evidencing the recordation of the same in the Official Public Records of Travis County, Texas has been provided to Pflugerville and Windermere.

V.

GENERAL PROVISIONS

5.01 Authority. This Agreement is made pursuant to the authority conferred in V.T.C.A. Local Government Code, Section 402.001.

5.02 Severability. If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and this Agreement shall be construed as if such invalid portion had never been contained herein and the provisions of this Agreement are expressly deemed severable for this purpose.

5.03 Cooperation. The parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.04 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

5.05 Amendments. Any amendment hereof must be in writing and shall be effective only if signed by the authorized representatives of Windermere, Pflugerville and the Owners.

5.06 Effect of Force Majeure. In the event that any party hereto is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure, relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other parties hereto. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply or wastewater systems, and any other incapacities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty. Force majeure shall relieve Pflugerville from liability to Windermere or any customer of Windermere for failure to provide water or wastewater service due to an inability covered by this

Article. Force majeure shall not relieve Windermere its obligation to make payment to Pflugerville for Service provided under this Agreement.

5.07 No Amendment of Other Agreements. This Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.

5.08 No Third Party Beneficiaries. This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement.

5.09 Assignment The rights and obligations of the Owners arising under this Agreement shall only be assignable if (i) the assignee assumes all of the obligations of the Owners hereunder in writing, and (ii) written notice of the assignment, together with a fully executed copy of the written assignment and assumption document, is furnished to Pflugerville and Windermere.

5.10 Applicable Law. This Agreement shall be construed in accordance with Texas law.

5.11 Venue. Venue for any action arising hereunder shall be in Travis County, Texas.

5.12 Notices. Notices to be provided hereunder shall be sufficient if forwarded to the other parties by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of the other parties shown below:

WINDERMERE:

Windermere Utility Company, Inc.
Attn: Bill Jasura
2700 Pecan Street West
Suite 423
Pflugerville, Texas 78660-3199

PFLUGERVILLE:

David Buesing, Acting City Manager
City of Pflugerville
P. O. Box 589
Pflugerville, Texas 78691

5.13 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A - Description of the Owner Tracts
- Exhibit B - Points of Connection and Interconnect Facilities for Owner Tracts

5.14 Agreements of Owners Constitute Covenants Running With the Land. The Agreements of the Owners set forth in this Agreement constitute covenants running with the land

comprising the Owner Tracts and will be binding upon the Owners and their successors and assigns.

5.15 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Each party represents and warrants that it has the full right, power and authority to execute this Agreement.

5.16 Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all parties.

WINDERMERE UTILITY COMPANY, INC., a utility company organized under the laws of the State of Texas

By: Bill Jasurka
Name: Bill Jasurka
Title: Vice President
Date: 1-13-05

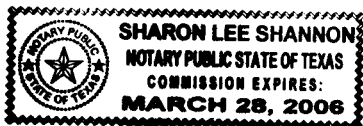
ATTEST:

Bill Jasurka
Corporate Secretary

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 13th day of January, 2004, 2005 by Bill Jasurka, Vice President of Windermere Utility Company, Inc., a utility company organized under the laws of the State of Texas, on behalf of said utility company.

[Signature]
Notary Public Signature



CITY OF PFLUGERVILLE:

By: David Buesing
David Buesing, Acting City Manager
Date: _____

ATTEST:

Karen Thompson
Karen Thompson, City Secretary

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of January, 2004,
by David Buesing, Acting City Manager of the City of Pflugerville, a Texas municipal
corporation, on behalf of said municipal corporation.

Kathy E. Ellis
Notary Public Signature

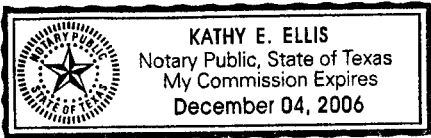
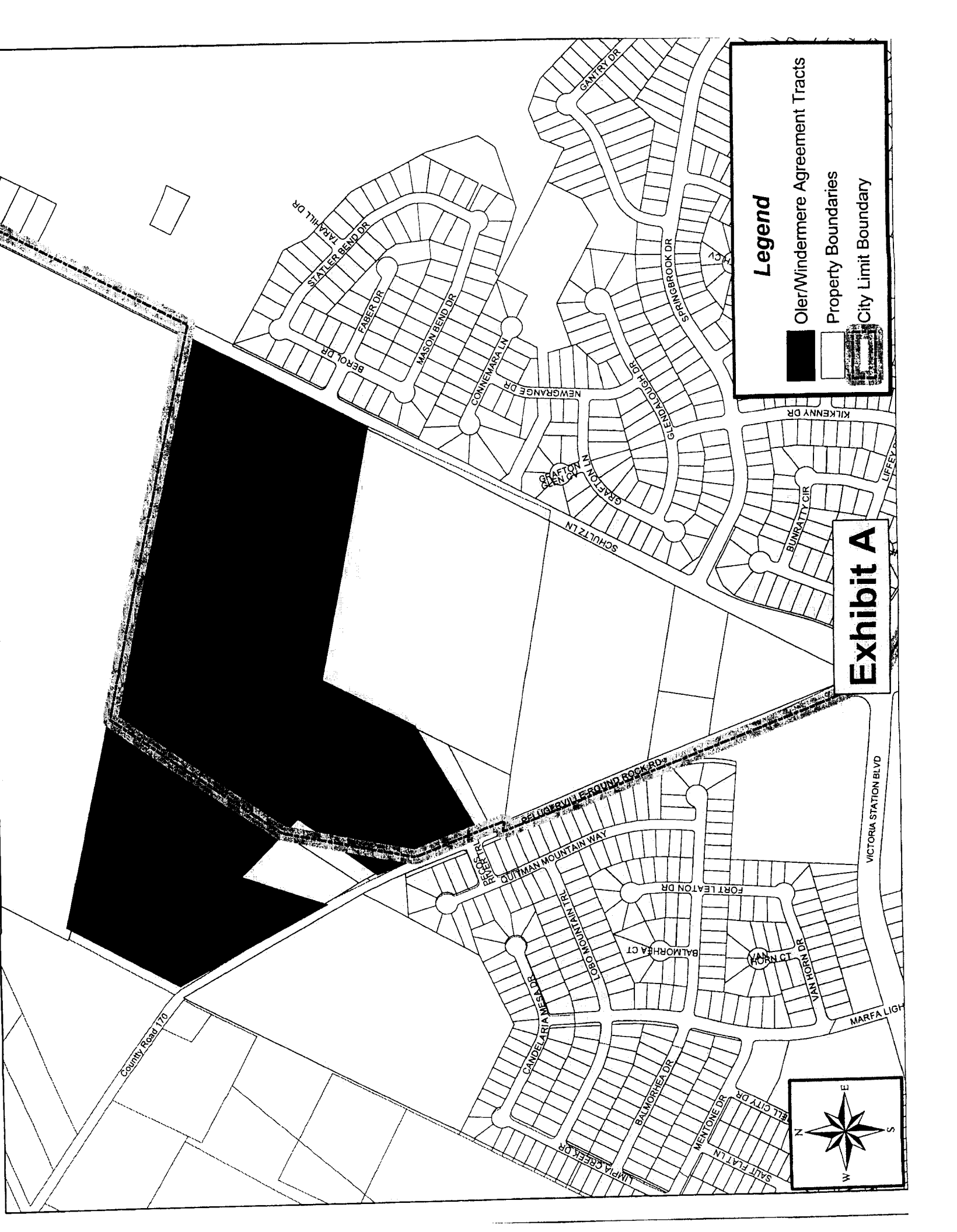


EXHIBIT "A"
DESCRIPTION OF THE OWNER TRACTS
(TO BE ATTACHED)



Legend




-  Oler/Windermere Agreement Tracts
-  Property Boundaries
-  City Limit Boundary

Exhibit A

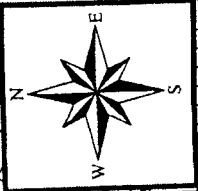
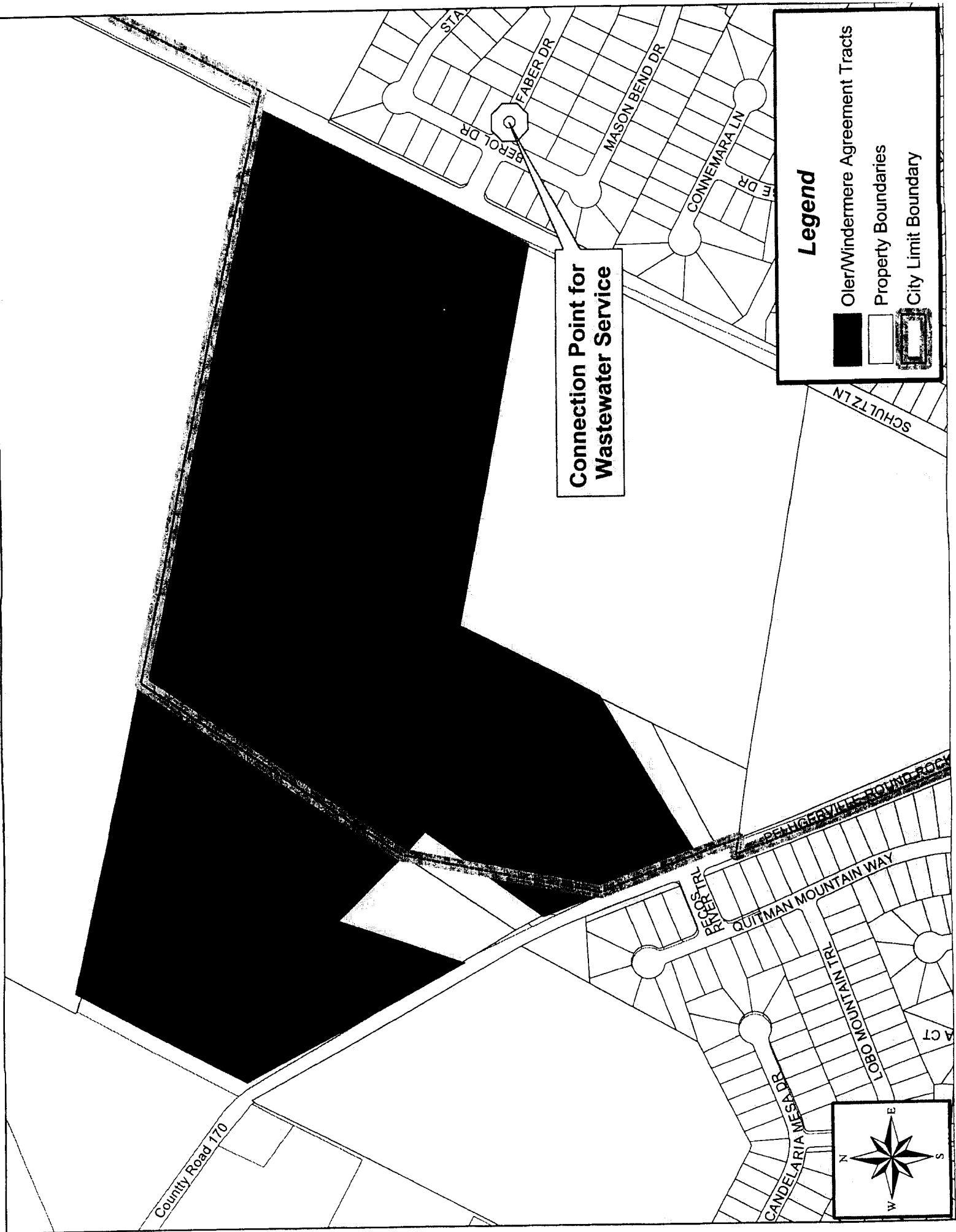





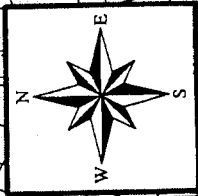
EXHIBIT "B"
POINTS OF CONNECTION AND
INTERCONNECT FACILITIES FOR THE OWNER TRACTS
(TO BE ATTACHED)



Connection Point for
Wastewater Service

Legend

-  Oler/Windermere Agreement Tracts
-  Property Boundaries
-  City Limit Boundary



County Road 170