

## WILLIAMSON COUNTY LICENSE AGREEMENT

WILLIAMSON COUNTY, a political subdivision of the State of Texas ("County"), and Silvercreek Development, Ltd., a Texas limited partnership ("Licensee"), enter into this License Agreement ("Agreement") upon the terms and conditions set forth below.

A. WHEREAS, the County has accepted the dedication of Mourning Dove Lane, a public thoroughfare as shown on the plat of Summerlyn Section L-1A, recorded at Document No. 2005090327 of the Official Public Records of Williamson County, Texas (the "Subdivision"); and

B. WHEREAS, Licensee plans to install, construct, maintain, and/or repair certain improvements consisting of bores, landscaping, lighting, fencing, irrigation facilities and/or drainage facilities (collectively, the "Improvements") within a portion of the right-of-way of Mourning Dove Lane (the "Licensed Property"), all of which are more particularly described on Exhibit "A", attached hereto and incorporated herein by reference.

NOW, THEREFORE, in exchange for the mutual consideration herein expressed, the provision of insurance to and the indemnification of the County, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the County and the Licensee agree as follows:

### I.

#### GRANT OF LICENSE

1. The County hereby grants to Licensee permission to use the Licensed Property to install, construct, maintain, and/or repair the Improvements.
2. The County makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.
3. Licensee agrees that all installation, construction, maintenance and repair permitted by this Agreement shall be done in compliance with all applicable county, state and/or federal police, traffic, building, health and safety ordinances, laws and regulations in effect at the time said construction and maintenance is performed.

### II.

#### FEES

No fees shall be assessed or charged to Licensee, or its successors or assigns, for the license and permission herein granted.

### III.

#### COUNTY'S RIGHTS TO LICENSED PROPERTY

1. This Agreement is expressly subject and subordinate to the present and future rights of the County, its successors, assigns, lessees, grantees and licensees, to construct, install, establish, maintain, use, operate and renew any public utilities facilities, franchised public utilities, roadways or streets on, beneath or above the surface of the Licensed Property.

2. Nothing in this Agreement shall be construed to limit, in any way, the power of the County to widen, alter or improve the Licensed Property pursuant to official action by the appropriate governing body of the County, or its successors, *provided however*, the County hereby agrees to deliver to Licensee at least thirty (30) days' advance written notice of intent to take such action (including notice of formal consideration of such plan by any County department), and shall cooperate with Licensee such that, to the extent reasonably practicable, the Improvements and operations on the Licensed Property will not be materially affected thereby, and otherwise, to effect the relocation and/or removal of Improvements, at Licensee's sole cost.

3. Notwithstanding any provision in this Agreement to the contrary, the County retains the right to enter upon the Licensed Property at any time, without notice to Licensee, without assuming any obligation to Licensee, and remove, without liability to County, any of the Licensee's Improvements thereof whenever such removal is deemed necessary for protecting the public health or safety with respect to the Licensed Property.

### IV.

#### INSURANCE

1. Licensee shall obtain and maintain, at its sole expense, a commercial general liability insurance policy, written by a company acceptable to the County and licensed to do business in Texas, with a combined single limit of not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), which coverage may be provided in the form of a rider and/or endorsement to an existing insurance policy.

2. Such insurance coverage shall specifically name the County as an additional insured.

3. Said insurance coverage shall cover all perils arising from the activities of Licensee, its officers, directors, employees, agents or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each instrument affecting such coverage shall be delivered to the County on or before the date that Licensee begins construction of Licensee's Improvements contemplated in this Agreement.

4. So long as Licensee is using the Licensed Property, Licensee shall not allow such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty

(30) days after the County has received written notice as evidenced by a return receipt of registered or certified mail.

V.

INDEMNIFICATION

To the extent authorized by law, Licensee shall indemnify and hold harmless the County and its officers, agents and employees against all claims, suits, demands, judgments and expenses, including attorney's fees, or other liability for personal injury, death or damage to any person or property which is proximately caused by Licensee's construction and location of the Licensee's Improvements on the Licensed Property, or Licensee's actions or inactions in maintaining the Licensee's Improvements located on the Licensed Property. This indemnification provision, however, shall not apply to any claims, suits, damages, costs, losses or expenses (i) for which the County shall *have* been, or is entitled to be compensated by insurance provided under Article IV above, or (ii) which are proximately caused by the negligent or willful acts of the County, its agents, employees or contractors; provided further, however, that for the purposes of the foregoing, the County's act of entering into this Agreement shall not be deemed to be a "negligent or willful act"

VI.

CONDITIONS

1. Licensee's Responsibilities. Licensee will be responsible for any damage to, and/or for the relocation of, any existing facilities on the Licensed Property proximately caused by the installation, construction, maintenance, and/or repair of the Improvements. Furthermore, Licensee shall reimburse the County for all costs of replacing or repairing any property of the County or of others which are damaged or destroyed as a result of activities authorized under this Agreement by, or on behalf of, Licensee.

2. Maintenance. Licensee shall maintain the Licensed Property and the Improvements by keeping the area free of debris and litter. Upon written request of the County, Licensee shall remove dead or dying plants from the Licensed Property at Licensee's expense. Such removal of dead or dying plants shall be completed within thirty (30) days following receipt of such request.

3. Removal or Modification. Licensee agrees that removal or modification of any Improvements now existing or to be later replaced on the Licensed Property shall be at Licensee's sole expense. Said removal or modification shall be at Licensee's sole discretion, except where otherwise provided by this Agreement.

4. Default. In the event that Licensee fails to properly maintain the Licensed Property as required herein or otherwise fails to comply with the terms or conditions of this Agreement, the County shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of and, if Licensee does not

remedy the same to County's reasonable satisfaction within the 30-day period, the County may, in addition to other remedies available herein, (1) perform the work, (2) contract for the completion of the work, or (3) terminate this Agreement. Licensee agrees to pay, within thirty (30) days of written demand by the County, all costs and expenses incurred by the County in completing the work or contracting for the work to be completed.

## VII.

### EFFECTIVE DATE

This Agreement shall be effective on the \_\_\_\_ day of September, 2010, and unless terminated earlier as provided below, shall continue in full force and effect for so long as the Licensed Property is used for the purposes set forth herein.

## VIII.

### TERMINATION

1. Termination By Licensee. This Agreement may be terminated by Licensee as to the entire Licensed Property, or any part thereof, by delivering written notice of such termination to the County not later than thirty (30) days before the effective date of termination. If Licensee so terminates, then Licensee shall, within the 30-day notice period, remove from the Licensed Property, or such other portion thereof that is being terminated, the Improvements. Any of Improvements that are not removed within said period shall become the property of the County. Licensee hereby agrees and acknowledges that Licensee shall be liable to County for any substantive damages caused to the Licensed Property by the removal of the Improvements.

2. Termination By County.

(a) Subject to providing Licensee with thirty (30) days' advance written notice, this Agreement may be terminated at any time upon proper resolution passed by the Williamson County Commissioners Court if such termination is reasonably required by the public interest. Termination is reasonably required by the public interest if:

- (1) The Improvements, or a portion thereof, unreasonably interfere with the County's right-of-way;
- (2) Use of the Licensed Property becomes necessary for a public purpose;
- (3) The Improvements, or a portion thereof, constitute a danger to the public which the County deems, in its sole discretion, not to be remediable by alteration or maintenance;
- (4) Maintenance or alteration necessary to alleviate a danger to the public has not been made; or

- (5) Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to, any insurance requirements specified herein.
- (b) If Licensee abandons the use of all or any portion of the Licensed Property, and such abandonment has not been remedied by Licensee within thirty (30) days of receipt of written notice from the County:
- (1) This Agreement, only as to such portion or portions so abandoned, shall terminate.
  - (2) In such event, the County shall thereafter have the same complete title to the Licensed Property so abandoned as though this Agreement had never been made and shall have the right to enter upon the Licensed Property and remove any Improvements.
  - (3) All Improvements that are not removed prior to County's termination of the license shall be deemed to be the property of the County as of the date of County's termination.

## IX.

### MISCELLANEOUS PROVISIONS

1. Annexation. If the total area within the Licensed property is annexed for full purposes by the City of Leander or by the City of Liberty Hill (the "City"), all references in this Agreement to the "County" shall be construed to mean "the City"; and all references in this Agreement to the "County Commissioners' Court" shall be construed to mean "the City Council". Any other references to County employees shall be construed to mean the analogous City employee or officer.

2. Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, claim, or cause of action arising out of, or in connection with, this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

3. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each party that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

4. Covenant Running With Land; Waiver Of Default. This Agreement and all of the covenants herein contained shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive an event of default without affecting or impairing any right arising from any subsequent or other default.

5. Assignment. Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the County, which consent shall not be unreasonably conditioned, withheld, or delayed. In the event County consents to Licensee's assignment of its interest in this Agreement, and subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish the County with a copy of any such assignment or transfer, including the name, date, address and contact person. Notwithstanding the foregoing, the parties hereby acknowledge that Licensee is authorized and permitted to assign its interest in this Agreement, without further action of the County, to a homeowner's association for the Subdivision, and the County hereby consents to such assignment.

6. Notices. All notices, demands and requests for delivery of documents or information hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as of the time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage prepaid, or as of the time of delivery to Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed:

<b>If to Licensee:</b>	<b>With a copy to:</b>
Silvercreek Development, Ltd. 12401 Research Blvd., Bld.1 - Suite 300 Austin, Texas 78759	William T. Gunn, III 3345 Bee Caves Road, Suite 203 Austin, Texas 78746
	<b>and to:</b>
	Jesse L. Whittenton, Esq. 3345 Bee Caves Road, Suite 203 Austin, Texas 78746
	<b>and to:</b>
	Phil Mockford, Esq. P.O. Box 1642 Austin, Texas 78767
<b>If to County:</b>	<b>With a copy to:</b>
Dan A. Gattis (or successor) 710 Main Street, Suite 101 Georgetown, Texas 78626	Williamson County Attorney Jana Duty (or successor) 405 M.L.K. St., Box #7 Georgetown, Texas 78626

Either party and the addressees may change their address by giving the others written notice thereof in the manner set forth above, at least five (5) days in advance of the effective date for such new address.

7. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

8. Compliance With Laws. Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement.

9. Gender, Number And Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

10. Construction. Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable. There will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

11. No Waiver Of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

12. Entire Agreement. This Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS' COURT.

**[THE REMAINDER OF THIS PAGE IS BLANK]**



ACCEPTED this the \_\_\_\_ day of September 2010.

WILLIAMSON COUNTY, a political subdivision of the State of Texas,

By: [Signature]  
Dan A. Gattis, Williamson County Judge

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF WILLIAMSON   §

This instrument was acknowledged before me on this the 1<sup>st</sup> day of Sept., 2010 by Dan A. Gattis, as County Judge of WILLIAMSON COUNTY, a political subdivision of the State of Texas on behalf of said political subdivision.

Wendy Z. Cole  
NOTARY PUBLIC, State of Texas



LICENSEE:

SILVERCREEK DEVELOPMENT, LTD., a Texas limited partnership,

By: H-G WILLIAMSON, LLC, a Texas limited liability company, its General Partner,

By: [Signature]  
William T. Gunn, III, Manager

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF WILLIAMSON   §

This instrument was acknowledged before me on this the 31<sup>st</sup> day of AUGUST, 2010 by William T. Gunn, III, as Manager of H-G WILLIAMSON, LLC, the sole general partner of Silvercreek Development, Ltd., on behalf of said entities.

Deanna Michelle Hayes  
NOTARY PUBLIC, State of Texas





# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE  
08/20/2010

**PRODUCER**  
Capitol City Insurance/The Insurance Store  
8030 N. Mopac Expressway  
2nd Floor  
Austin TX 78759

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

## INSURERS AFFORDING COVERAGE

**INSURED**  
Silvercreek Development, Ltd.  
3345 Bee Caves Road  
Suite 203  
Austin TX 78746

INSURER A: Mid-Continent Casualty Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR Deductible \$500  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	04GL769764	09/28/2009	09/28/2010	EACH OCCURRENCE \$ 1000000 FIRE DAMAGE (Any one fire) \$ 100000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	<b>OTHER</b>				

### DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Certificate holder is listed as additional insured on the General Liability policy.  
Attn: Joe England  
deanna@gunnwhittington.com

### CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

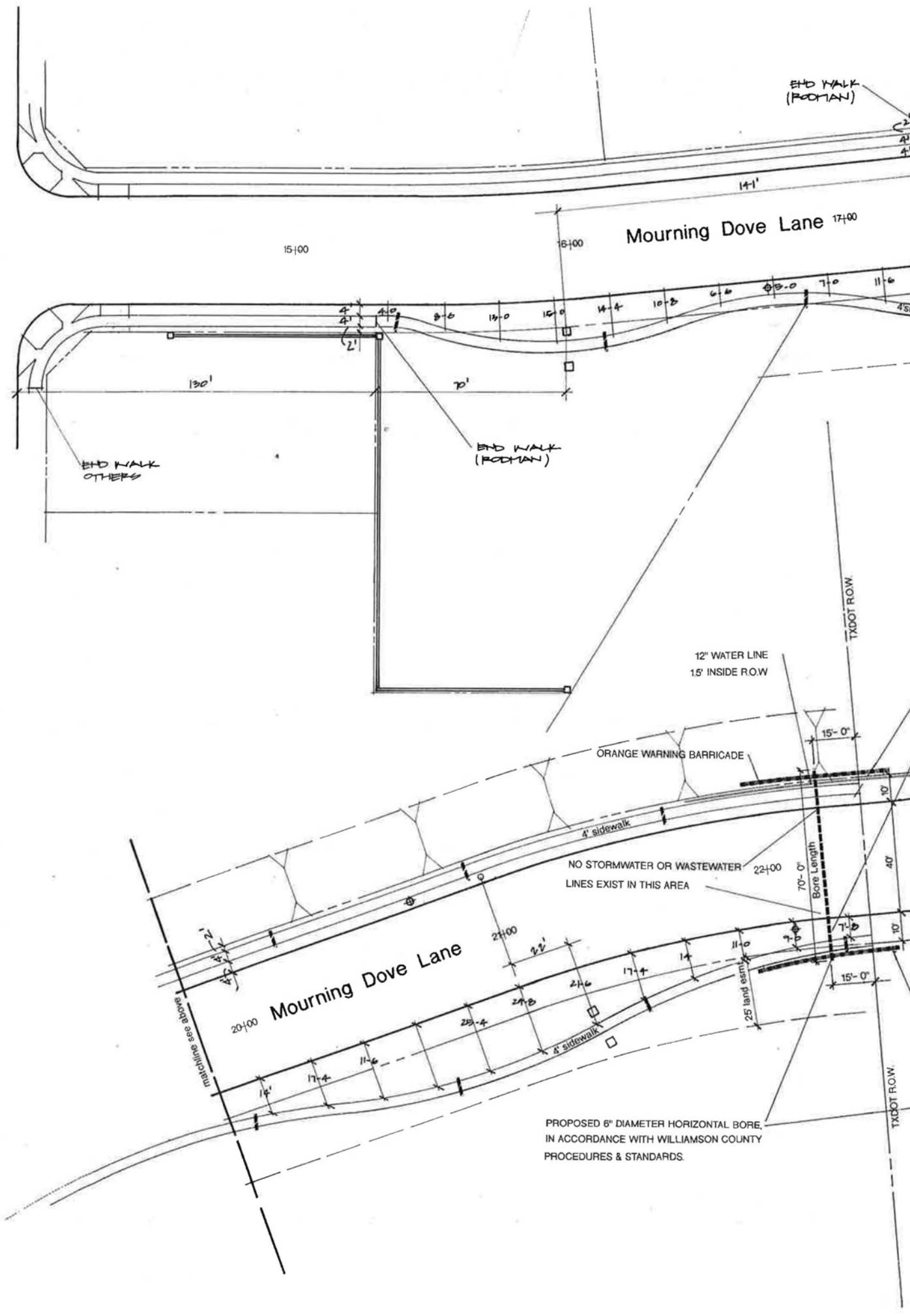
### CANCELLATION

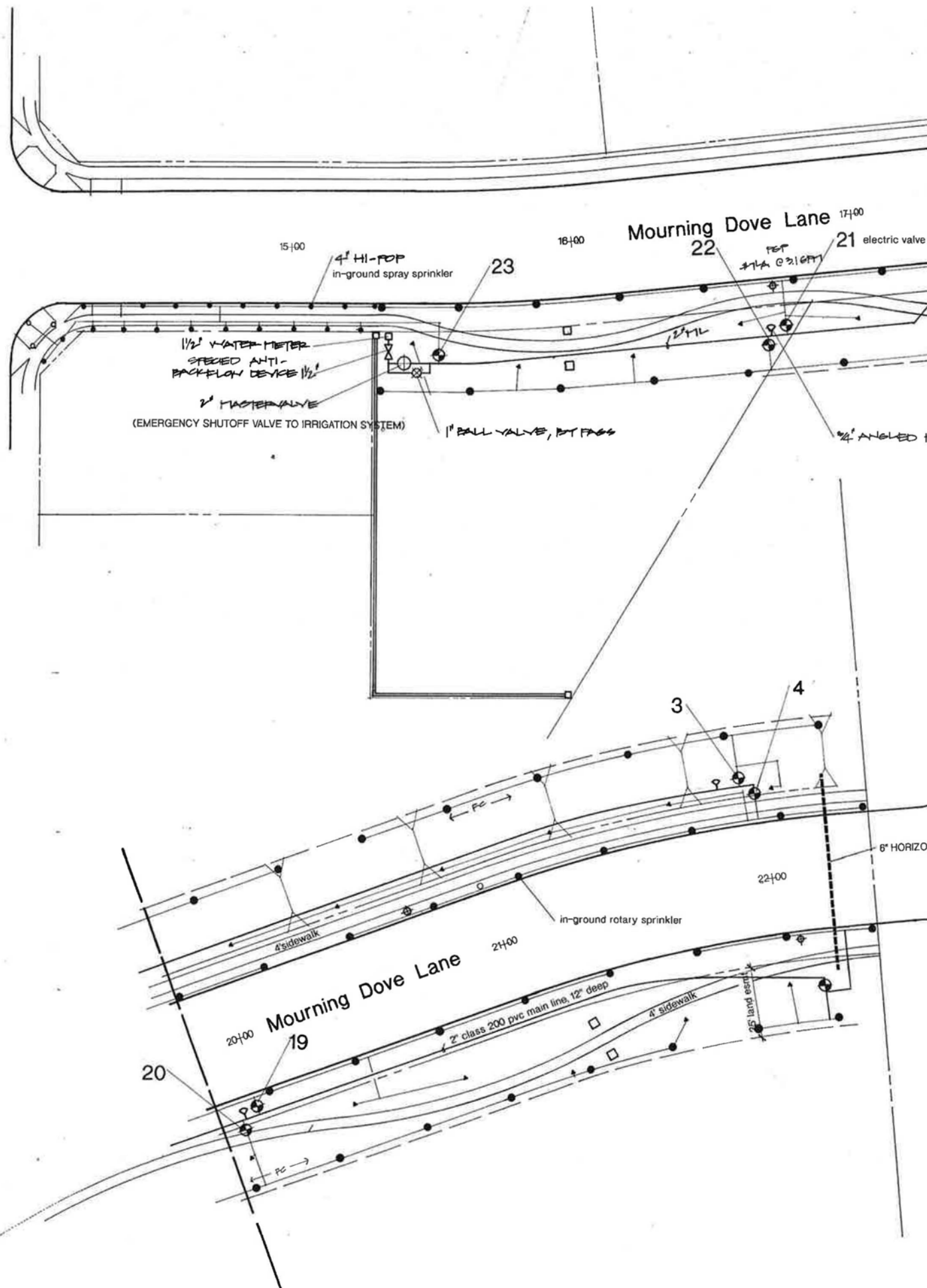
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

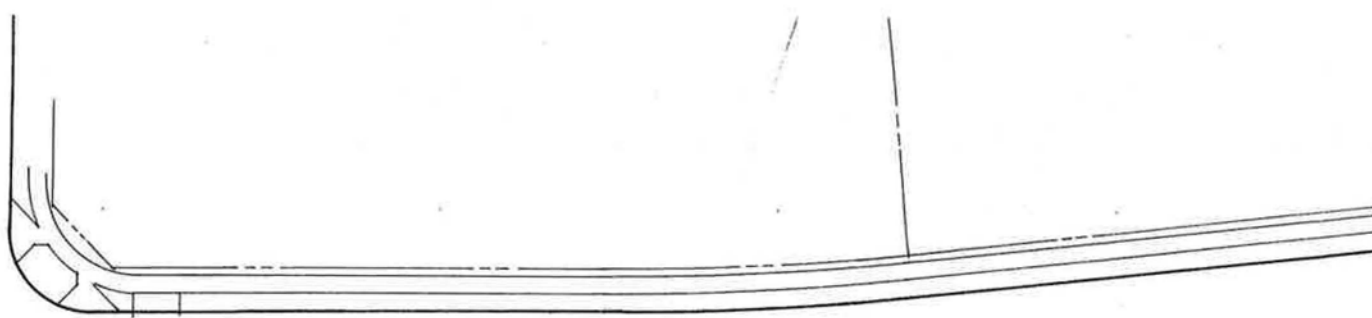
AUTHORIZED REPRESENTATIVE

*[Signature]*

Williamson County  
3151 SE Inner Loop, Ste B  
Georgetown TX 78626







Mourning Dove Lane 17+00

15+00

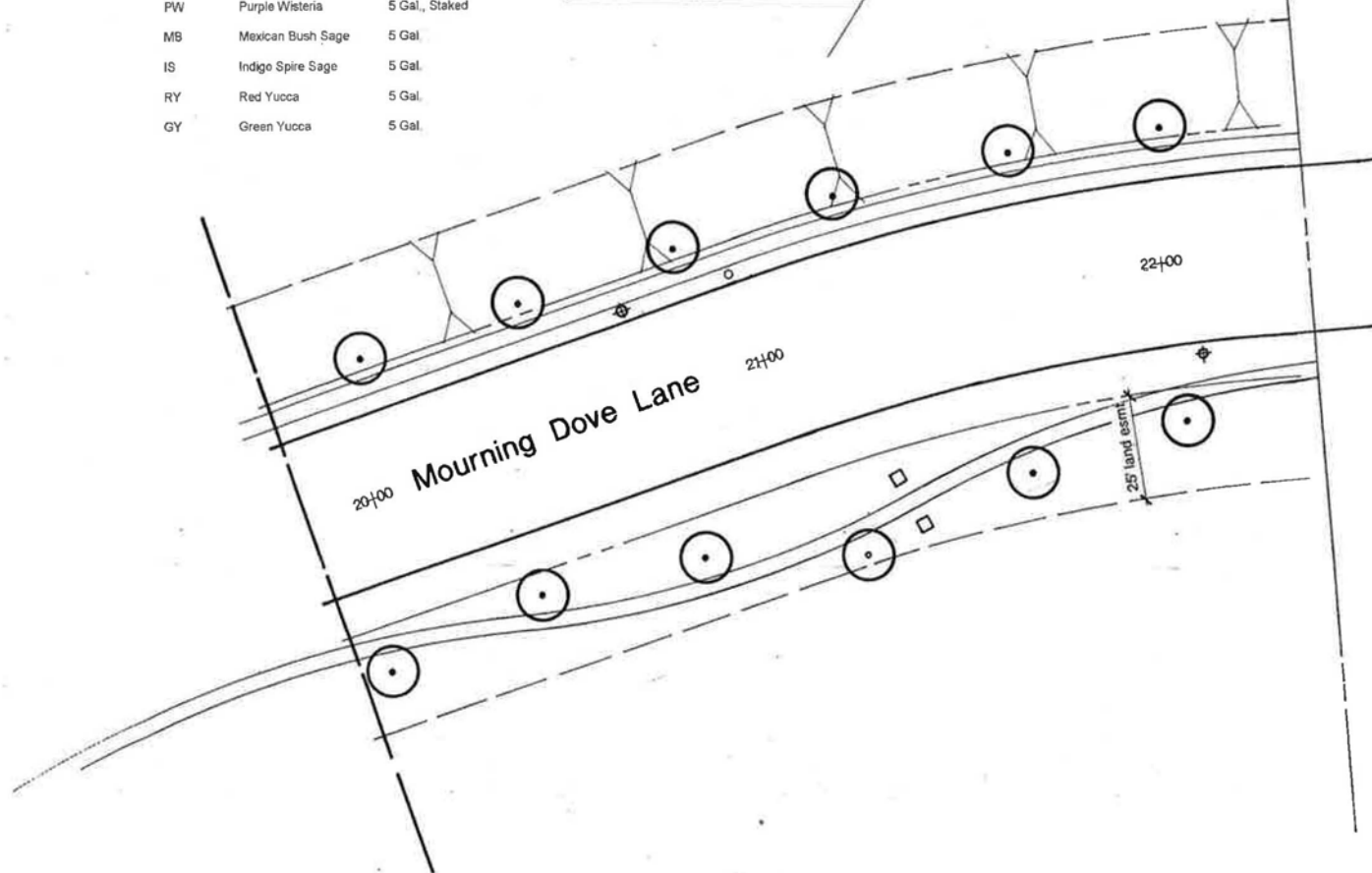
16+00

**PLANT MATERIAL**

LO	Live Oak	30 Gal., 2 1/2" Cal., 10' Ht. X 3" Sp. Straight trunk, full, round
BP	Bradford Pear	30 Gal., 2 1/2" Cal., 10' Ht. X 3" Sp. Straight trunk, full, round
GA	Green Agave	18" Ht. x 18" Sp.
SA	Spiney Agave	24" Ht. x 18" Sp.
WH	Witch Hazel	5 Gal.
AJ	Andorra Juniper	5 Gal.
MG	Maiden Grass	3 Gal.
LM	Lindhymer Mutt	3 Gal.
MFG	Mexican Feather Grass	3 Gal.
UR	Upright Rosemary	5 Gal.
CR	Creeping Rosemary	1 Gal.
NL	Newgold Lantana	1 Gal.
PS	Pink Skullcap	1 Gal.
PW	Purple Wisteria	5 Gal., Staked
MB	Mexican Bush Sage	5 Gal.
IS	Indigo Spire Sage	5 Gal.
RY	Red Yucca	5 Gal.
GY	Green Yucca	5 Gal.

live oak  
typ. symbol

bradford pear  
typ. symbol



20+00 Mourning Dove Lane

21+00

22+00

25' land esmt.