

STATE OF TEXAS

COUNTY OF WILLIAMSON

§ AMENDED DEVELOPMENT AGREEMENT
§ REGARDING
§ KAUFMAN LOOP

This is an AMENDED DEVELOPMENT AGREEMENT (the "Agreement") by and between WILLIAMSON COUNTY, a political subdivision of the State of Texas, ("County") and MREC MAG MorningStar, LLC, a Delaware limited liability corporation ("Developer"). The Effective Date of this Agreement is the date approved by the Williamson County Commissioners Court.

WHEREAS, Developer has acquired 200 acres (referred to as the "Property") and contracted to acquire the balance of approximately 529.96 acres of real property located at the northeast corner of SH 29 and Ronald Reagan Boulevard and as described in **Exhibit "A"**, attached hereto.

WHEREAS, the County and the Developer desire to co-operate in the expeditious engineering, design and construction of Kauffman Loop, a roadway connecting SH 29 to Ronald Reagan Blvd., through the Property (the "Project"), the approximate location of which is shown on **Exhibit "B"**, attached hereto; and

WHEREAS, the Developer desires to design, engineer and construct the Project pursuant to the terms and conditions stated herein; and

WHEREAS, the County desires to reimburse the Developer for a portion of the costs related to the construction of the Project pursuant to the terms and conditions stated herein, contingent upon a reimbursement of \$800,000 of these costs from future bond issuances from a municipal utility district created by Developer.

NOW THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the County and Developer hereby agree as follows:

A. **PURPOSE**

The purpose of this Agreement is to provide for the orderly and expeditious design, engineering and construction of the extension of Kauffman Loop running from SH 29 to Ronald Reagan Blvd., the approximate location of which is shown on **Exhibit "B"**.

B. **GENERAL TERMS AND CONDITIONS**

1. The Project is defined as the construction of a four-lane, divided collector road, together with all required related construction and drainage and detention improvements extending through the Property, to be located approximately as shown on Exhibit "B" attached hereto and pursuant to the cross-section as shown on **Exhibit "C"**, attached hereto. The Project also includes all permitting, environmental mitigation, medians, striping and guardrails and other items determined by the County to be necessary for the road construction.

2. The Project Cost is herein defined as all costs of material, labor, grading, paving, drainage, detention, erosion control, mitigation and all other costs related to the construction of the Project. Project Cost does not include costs of engineering, design, construction phase design services, utility relocation, and construction inspection and testing.

C. **DEVELOPER OBLIGATIONS**

1. The Developer shall be solely responsible for all costs related to the engineering, design, inspection, testing and construction of the Project, including all costs associated with the repair or replacement of work rejected by the County. All preliminary and final designs shall be approved by the County prior to bid. The Project shall be constructed pursuant to all Williamson County road bond design standards. Additionally, the Project shall utilize design speeds and pavement design as required by the County.

2. The Developer shall construct all four lanes within the time period described below, subject to force majeure conditions. Construction will include a sidewalk on one side of the Project abutting the commercial portion of the Property, and a center median. The sidewalk must be installed along the frontage of any commercial tract abutting the Project prior to the recordation of a final plat of said commercial tract.

3. The Developer shall endeavor to bid the Project within eight (8) months after the Effective Date of this Agreement and to complete the Project within twelve (12) months after contract award. The Developer agrees to co-ordinate with the County to insure the Project contract is bid pursuant to all conditions required by the Texas Competitive Bidding Act as found in Chapter 262.021 of the Texas Local Government Code.

4. If the Project, except for the revegetation, is not completed and accepted by the County within 30 months after the Effective Date, the County reserves the right to declare this Agreement null and void and neither party shall be liable in any way to the other party because of said termination. The Developer shall be permitted to perform the revegetation at a later date, but not later than as soon as seasonally appropriate. This Agreement may be extended by the County for up to 4 years after the Effective Date.

5. The Developer shall dedicate all right-of-way for the Project through the Property except for the right-of-way shown on **Exhibit "D"**, attached hereto and all temporary and permanent easements necessary for the conveyance of storm water, detention and water quality on the Property so that no temporary or permanent facilities will be required within the Project right-of-way. The right-of-way shall be at a minimum of 120 feet wide, with the dedication of additional right-of-way as needed in the future for turn lanes on SH 29 and Reagan Blvd. and other intersections, if required by the County or TxDOT. Dedication of this additional right-of-way shall occur as the referenced improvements are constructed. Underground utilities and

appurtenant facilities may be located within the right-of-way. Sidewalks may be located inside of the right-of-way, but maintenance of sidewalks will be the sole responsibility of Developer or assigns. If required in the future, any and all costs for a deceleration lane on SH 29 shall be the sole responsibility of the Developer or its assigns.

6. The Developer shall be responsible for all costs related to the engineering, design, and construction of or relocation of any water, wastewater and dry utility items, including all permitting, inspection and testing costs.

7. The Developer is responsible for all costs associated with securing all environmental permits and securing all environmental mitigation, if necessary to construct the Project.

8. The design, construction and maintenance of all environmental mitigation areas, water detention and water quality areas not within County-owned property shall be the sole responsibility of Developer and his assigns.

9. The parties have previously agreed that the Developer and/or MUD shall maintain Kauffman Loop for a period of ten (10) years after completion of the Project. Upon the expiration of ten (10) years after completion of the Project, prior to the County taking responsibility for maintenance of Kauffman Loop, the Developer shall perform the following maintenance and repairs: crack seal, seal coat, restripe, replacement of pavement markers, repair signage, and repair obvious wear and tear items, including but not limited to potholes.

10. The Developer shall be responsible for building three (3) left turn lanes (the "Left Turn Lanes") on Kauffman Loop, as shown on **Exhibit "E"**, attached hereto, at a cost of \$48,040.30.

11. In compliance with County roadway specifications adopted after execution of the original Development Agreement, the Developer shall be responsible for installation of 2" surface course of "virgin" Type D HMAC pavement on Kauffman Loop, at a cost of \$30,326.00.

12. In compliance with County roadway specifications adopted after execution of the original Development Agreement, the Developer shall be responsible for installation of a base course of 2.5" of Type C (in lieu of 2.5" of Type D) HMAC pavement on Kauffman Loop, at a cost of \$4,743.75.

13. In compliance with County roadway specifications adopted after execution of the original Development Agreement, the Developer shall be responsible for installation of an additional 197 feet of metal beam guard fence on Kauffman Loop at a cost of \$8,108.78.

14. The Project shall be constructed by the Developer in accordance with the roadway design specifications adopted by the County as of January 19, 2016.

D. COUNTY OBLIGATIONS

1. The County shall be responsible for reimbursing the Developer for a portion of the Project Costs associated with the construction of the Project ("County Reimbursement"), which is to be One Million, Five Hundred and Ninety-Seven and No/Dollars (\$1,597,000). In no event shall the County be obligated to reimburse more than \$1,597,000, unless a higher amount is formally approved by the Williamson County Commissioners Court.

2. \$200,000.00 of the County Reimbursement shall be withheld pending Developer's completion of the revegetation. Upon completion of the revegetation and acceptance of same by County, County shall reimburse to the Developer the final \$200,000.00.

3. The County shall reimburse the Developer for one-half the cost of the Left Turn Lanes up to but not more than \$24,020.15.

4. The County shall reimburse the Developer for one-half the cost of the additional expenses associated with compliance with County roadway specifications adopted after execution of the original Development Agreement up to but not more than \$15,163.00 for installation of 2" of virgin Type D HMAC and \$2,371.87 for the installation of Type C HMAC

5. The County shall reimburse the Developer for one-half the cost of the additional expenses associated with compliance with County roadway specifications adopted after execution of the original Development Agreement up to but not more than \$4,054.39 for installation of an additional 197 feet of metal beam guard fence.

6. The County reserves the right to inspect, test, accept and reject all construction materials, products and workmanship.

7. The County shall enter into a license agreement with the Developer, or assigns, to allow the Developer to install and maintain County-approved landscape, irrigation, sidewalks and hardscape improvements within the Project right-of-way owned and regulated by the County,

8. The County's payment shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by the County within thirty (30) days from the date the Williamson County Auditor receives complete back-up information. In no event, however, shall the County be obligated to pay any portion of the County reimbursement until (i) full and clear title has been insured by a title company acceptable to the County for all right-of-way tracts, and (ii) the Project is accepted by the County and open to the public, and (iii) the invoicing is approved by the Williamson County Auditor's office as being compliant with this Agreement. The Developer agrees to make available documentation in reasonable detail evidencing any Project costs for which reimbursement is sought.

9. In addition to the above, prior to any reimbursement, the Developer must submit to the County an "all bills paid" affidavit, an affidavit stating that all construction claims are resolved, an electronic copy of all as-built documents including, but not limited to, all plans and specifications, and an electronic copy of all bridge calculations sealed by a Texas professional engineer.

10. The County will be responsible for securing the right-of-way through the tract abutting Developer's Property and Ronald Reagan Blvd., said right-of-way being located as shown on Exhibit "D", attached hereto.

11. The County consents to the Williamson County Utility District # 23 ("MUD") created by Developer acquiring road powers pursuant to Section 52, Article III, of the Texas Constitution through the passage of legislation at the Texas legislature concurrently with the approval of this Agreement and in the form approved by the MUD and the County at a later date. Such legislation shall contain language that all roads constructed within the District, except Kaufman Loop, shall be constructed pursuant to County regulations and that the MUD shall be solely responsible for maintaining said roads. All recorded plats shall reflect in the plat notes that the MUD shall be solely responsible for maintaining subdivision roads, excluding Kaufman Loop. As additional consideration for the County's consent described in this section, the Developer agrees that the MUD will reimburse the County the total sum of \$800,000 for the County's participation in the funding of the Kaufman Loop Project. The first \$200,000 reimbursement shall be due and owing from the 3rd MUD bond issuance. The second \$200,000 reimbursement shall be due and owing from the 4th MUD bond issuance. The third \$200,000 reimbursement shall be due and owing from the 5th MUD bond issuance. The final \$200,000 balance of the \$800,000 reimbursement shall be due and owing from the 6th bond issuance or from the final bond issuance, whichever occurs earliest.

E. **SH 29 RIGHT-OF-WAY**

This Agreement is specifically contingent upon the County successfully acquiring approximately 13.77 acres of property from Gaida Family Limited Partnership for SH 29 right-of-way ("SH 29 ROW") at \$2.40 per square foot. If for any reason the County fails to close on the purchase of the SH 29 ROW property within three (3) months of the Effective Date of this Agreement, the County shall have the option of declaring this Agreement null and void. The acquisition of the SH 29 ROW includes an approximate 1.75 acres to be utilized as a drainage area. The County agrees to co-operate with TxDOT, TCEQ and the Developer to relocate this drainage area to a mutually-agreed upon location to accommodate future development.

F. **RIGHT TO AUDIT.**

Developer agrees that County, or its duly authorized representatives shall, until the expiration of one (1) years after termination or expiration of the Agreement and/or any amendment, have access to and the right to examine and photocopy any and all books, documents, papers and records of Developer which are directly pertinent to the services to be performed or goods to be delivered for the purposes of making audits, examinations, excerpts and transcriptions. Developer agrees that County shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Developer reasonable advance notice of intended audits.

G. **MISCELLANEOUS PROVISIONS**

1. **Actions Performable.** The County and the Developer agree that all actions to be performed under this Agreement are performable in Williamson County, Texas.

2. Governing Law. The County and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

3. Severability. If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

4. Complete Agreement. This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties.

5. Exhibits. All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.

6. Notice. All notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be sent by (i) telecopy, with the original delivered by hand or overnight carried, (ii) by overnight courier or hand delivery, or (iii) certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

County:

County Judge
Dan A. Gattis
710 S. Main Street, Suite 101
Georgetown, TX 78626
Phone: (512) 943-1577

Developer:

MREC MAG Morningstar, LLC
Attn: Wyatt Henderson
15443 Knoll Trail Drive, Suite 130

Dallas, Texas 75248
Phone: (972) 715-6450

and

Arthur Nevid
Mountain Real Estate Capital
13860 Ballantyne Corporate Place, Suite 130
Charlotte, NC 28277

7. Force Majeure. Developer and the County agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

8. Assignment. This Agreement may be assigned by the Developer only with the written consent of the Williamson County Commissioners Court.

9. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the County and Developer, respectively.

10. Agreement Binds Successors and Runs with the Land. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on all Owners. After the Effective Date hereof, this Agreement, at the County's cost, shall be recorded in the Official Public Records of Williamson County, Texas.

SIGNED as of this _____ day of _____, 2016.

WILLIAMSON COUNTY

By: 

Dan A. Gattis, County Judge

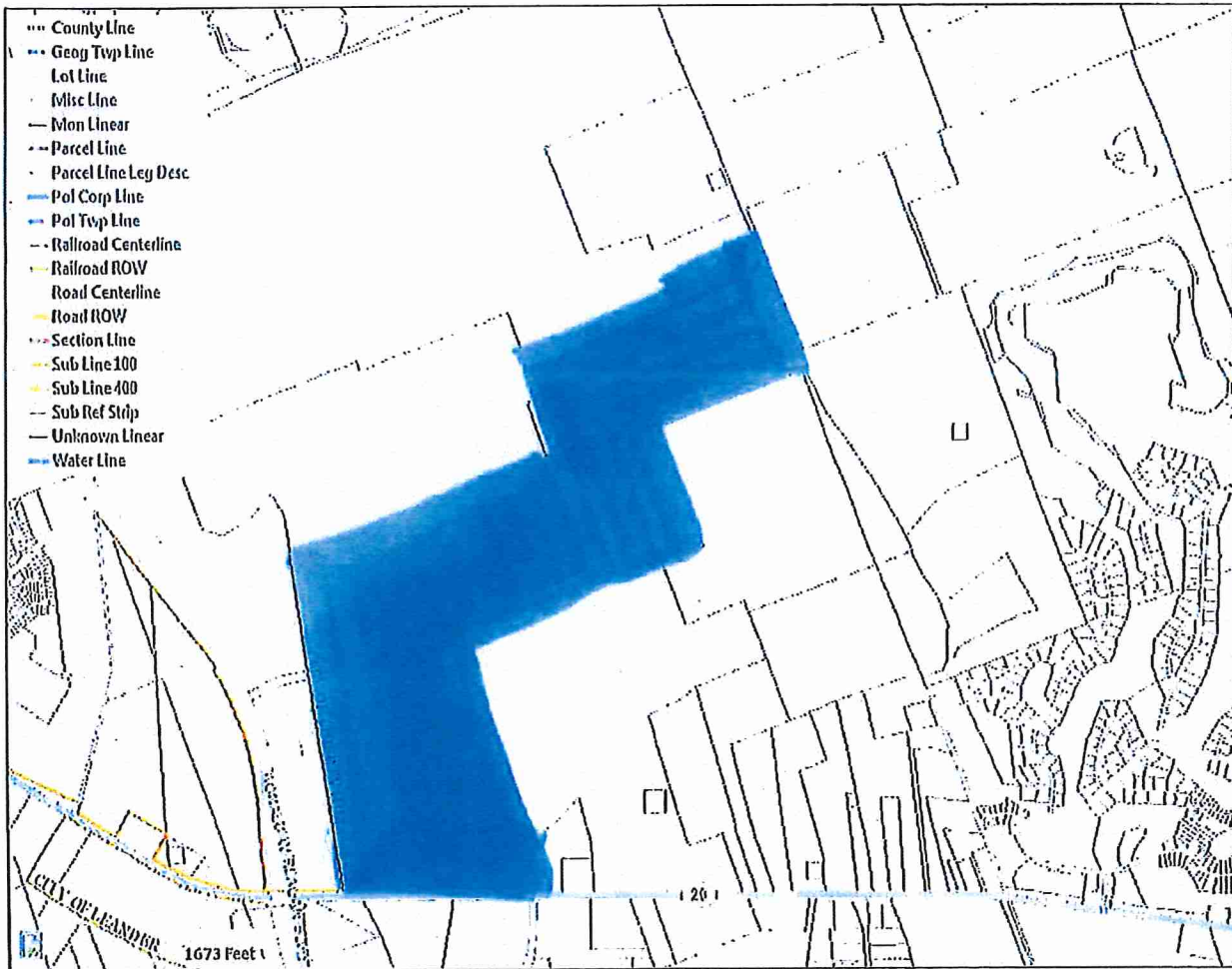
ATTEST:


Nancy Rister, County Clerk

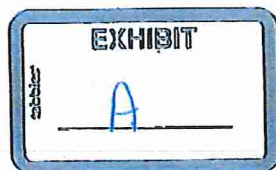
MREC MAG MorningStar, LLC

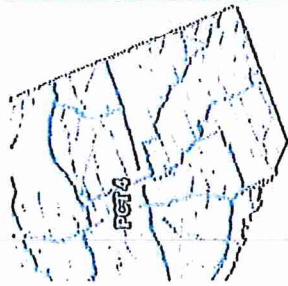
By: 

Manager



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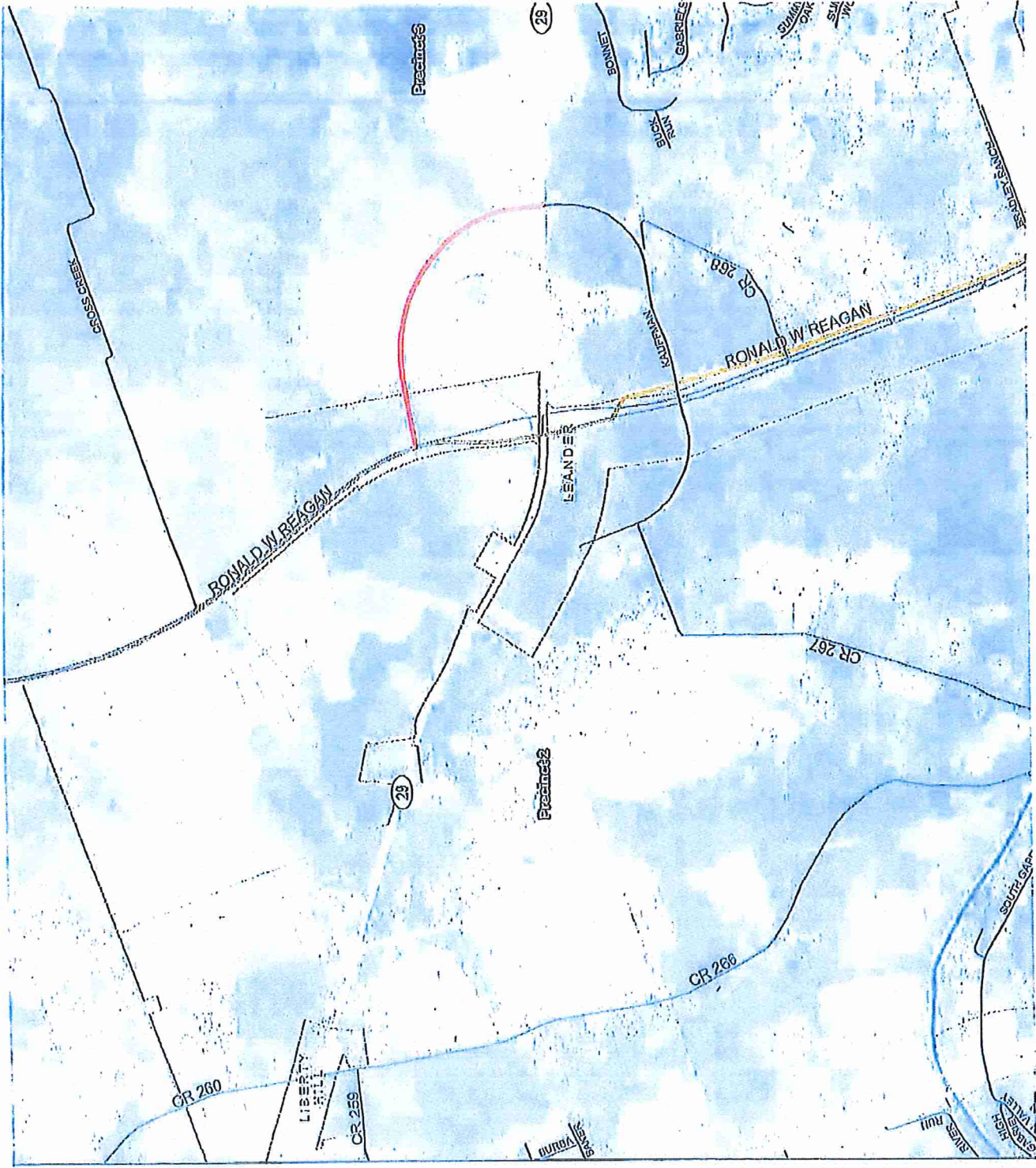




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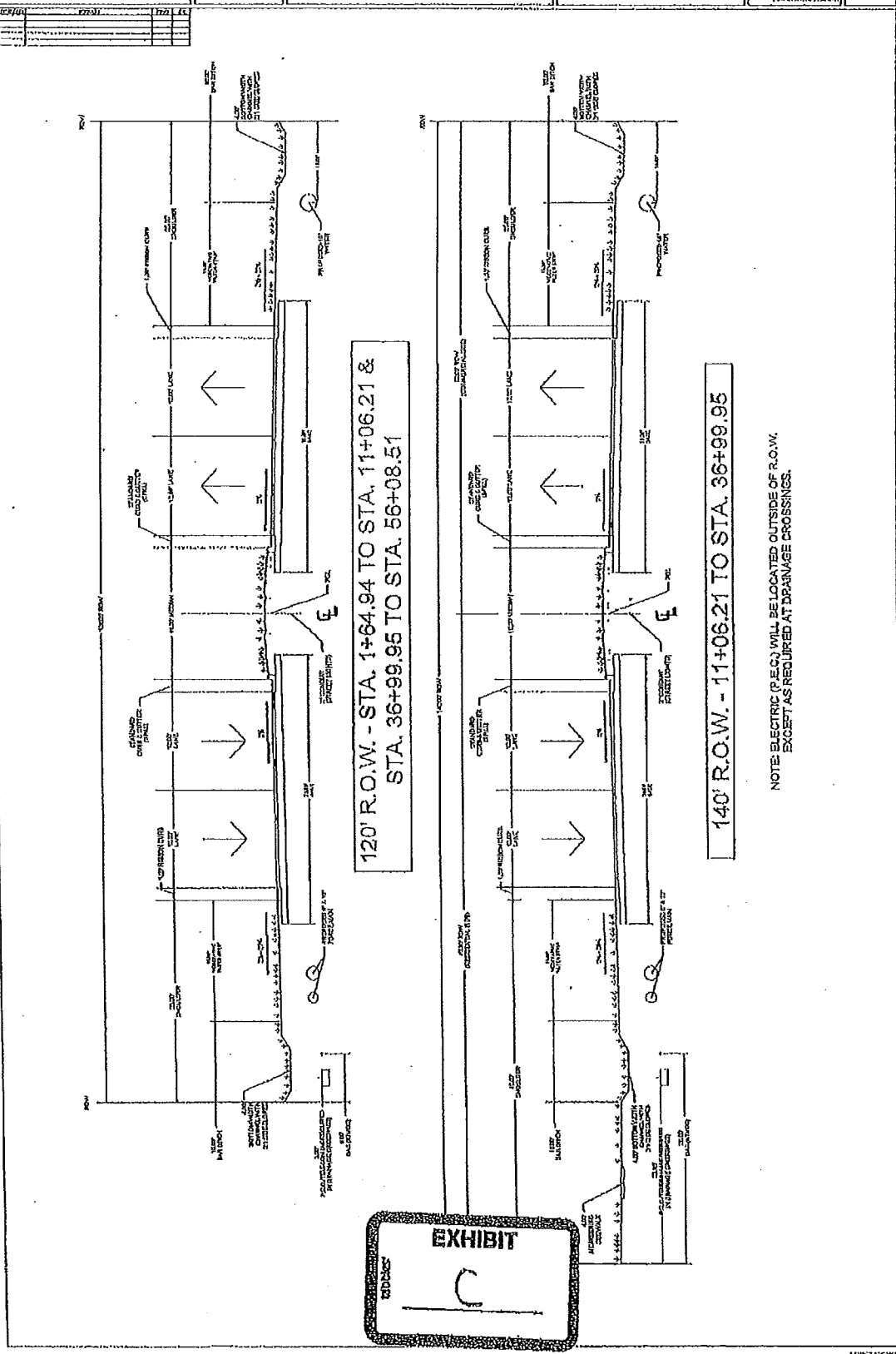


EXHIBIT
C

FOREST

NG CO.

EXHIBIT

D

REVISED DESCRIPTION FOR WILCO LAND INVESTMENTS I, LLC

KAUFFMAN LOOP

BEING 2.40 ac. of the Greenleaf Fisk Survey, Abstract No. 5, in Williamson County, Texas; part of the property called 137.49 acres which was conveyed to Wilco Land Investments I, LLC, as described in Doc. 2014003388, of the Official Public Records of Williamson County, Texas (OPRWCT). This tract was surveyed on the ground in April of 2014 under the direction of William F. Forest, Jr., Registered Professional Land Surveyor No. 1847. Survey note: The bearing basis for this survey is the State Plane Coordinate System, Grid North, Texas Central Zone.

BEGINNING at an iron pin which was found at the Northwest corner of a 12.35 acre parcel, in the East line of the said tract called 137.49 acres; and at the Northwest corner of a 129.96 acre parcel and the Southwest corner of a 200.00 acre parcel. This corner exists on the North line of the proposed roadway to be known as Kauffman Loop and at the Northeast corner of the property described herein, in the lower West boundary of the property called 529.833 ac. (Gaida Family L.P. Doc. 2009034512); and in the lower West boundary of the property called 250.75 ac. (Tract 2 Doc. 2004077499). An iron pin found at the Southeast corner of the said 137.49 acres stands S 07°36'45" E 2906.59 feet.

THENCE with the East boundary of the said tract called 137.49 acres, and the lower West boundary of the tracts called 529.833 acres and 250.75 acres, S 07°36'45" E 120.12 feet to an iron pin which was found.

THENCE with the South line of the proposed roadway to be known as Kauffman Loop, (L3) S 84°55'46" W 108.77 feet to an iron pin which was set at the beginning of a curve (C18) 477.78 feet with the arc of a curve to the left having a radius of 1440.00 feet and a central angle of 19°00'37", the chord bears S 75°25'29" W 475.59 feet to an iron pin which was set at the end of the curve; and S 65° 55'12" W 267.79 feet to an iron pin which was set in the East boundary of Ronald Reagan Blvd.

THENCE with the East line of Ronald Reagan Blvd. (formerly known as Patmer Lane), (C19) 120.01 feet with the arc of a curve to the left having a radius of 3624.88 feet and a central angle of 01°53'49", the chord bears N 24°05'04" W 120.00 feet to an iron pin which was set.

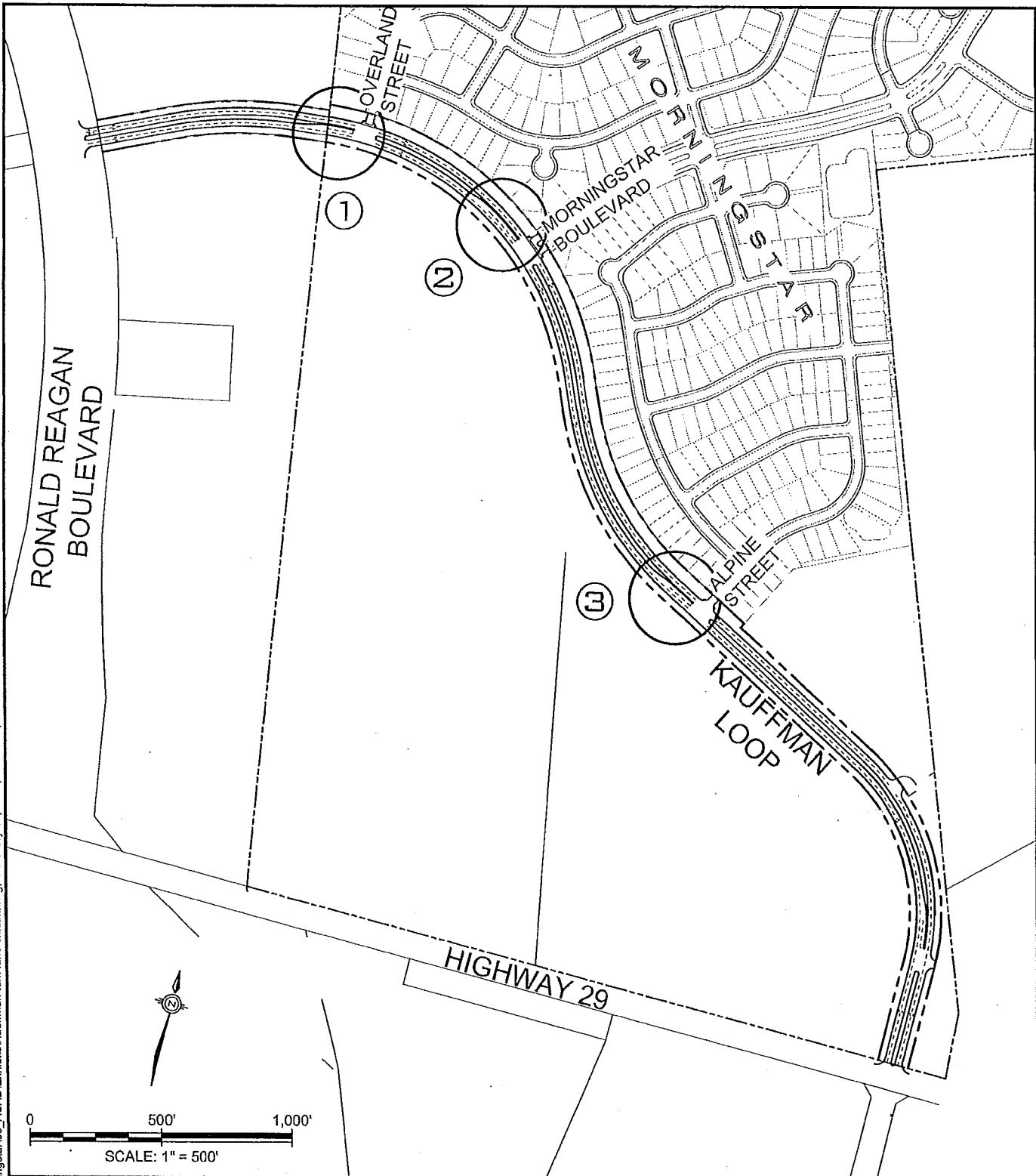
THENCE with the North line of the proposed roadway to be known as Kauffman Loop, N 65° 55'12" E 267.79 feet to an iron pin which was set at the beginning of a curve to the right (C17) having a radius of 1560.00 feet and a central angle of 19°00'36", 517.59 feet with the arc of the curve, the chord bears N 75°25'29" E 515.22 feet to an iron pin set at the end of the curve; and (L4) N 84°55'46" E 103.45 feet to the POINT OF BEGINNING.

I, WM. F. FOREST, JR., do hereby certify that this survey was made on the ground of the property legally described hereon, under my supervision. This description is true and correct to the best of my knowledge and belief. The attached plat identifies any significant boundary line conflicts, shortages in area, apparent protrusions, intrusions or overlapping of improvements. This property abuts a public roadway, except as shown. Ownership and easement information for this tract has not been researched except as shown on the attached plat.

TO CERTIFY WHICH, WITNESS my hand and seal at Georgetown, Texas, this the 18th day of June of 2014, A.D. File: kauffmanloopcentralsection revised.doc


WM. F. FOREST JR.
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1847





LAND DEV

CONSULTING, L
OFFICE: 512.872.66
FIRM NO. 16384

EXHIBIT

"E"

KAUFFMAN LOOP
TURN LANE
LOCATIONS