

DEVELOPMENT AGREEMENT

This Development Agreement (this “*Agreement*”) is made as of March 16, 2015, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the “City”), and **Yaupon Trails LTD LLC** a Texas limited liability company (the “Developer”).

RECITALS

WHEREAS, in accordance with the provisions of Chapter 372, TEX. LOCAL GOV'T CODE, and Resolution No. 2015-05, the City Council of the City of Tomball created the Public Improvement District Number Five (the “*PID*”) pursuant to the petition for creation from the owner thereof; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City and the land within the PID to finance the construction of certain PID Improvements (defined below) and that an assessment against the benefited property within the PID should be made; and

WHEREAS, the Developer is the owner of certain property within the PID described in Exhibit A and B, and wishes to finance and construct certain PID projects; and

WHEREAS, the Developer intends to assist the City in the financing and construction of the PID Improvements, in exchange for the City's agreement to reimburse the Developer in accordance with the terms of this Agreement; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Developer contract and agree as follows:

ARTICLE 1 GENERAL TERMS

1.01 Definitions. The terms “*Agreement*,” “*City*,” “*Developer*,” “*PID*,” and “*PID Agreement*” have the meanings set forth in the preamble hereof, and the following terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement, the words “shall” and “will” are mandatory, and the word “may” is permissive.

Act shall mean the Public Improvement District Assessment Act, Chapter 372, TEX. LOCAL GOV'T CODE, as amended.

Assessments shall mean assessments levied and collected in connection with the PID pursuant to the Act and the Plan, and deposited by the City into a PID Revenue Fund.

Developer Advances shall mean any funds advanced by the Developer pursuant to **Section 5.01**, and shall include any interest payable thereon.

Net Assessments shall mean the annual deposits of the Assessments into the PID Revenue Fund, less amounts reasonably required or anticipated to be required for the administration and operation of the PID in carrying out its responsibilities hereunder, including a reasonable operating reserve.

Parties or *Party* shall mean the City, and the Developer as parties to this Agreement.

PID Improvements shall mean the improvements described in **Article 3** hereof.

PID Revenue Fund shall mean the special fund established by the City and funded with payments made to the City pursuant to the PID.

Plan shall mean the final Service and Assessment Plan for the PID as approved by City Council in accordance with the Act.

Project shall mean the residential development within the PID projected to be carried out by the Developer described on Exhibit B.

1.02 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2 REPRESENTATIONS

2.01 Representations of the City. The City hereby represents that:

a. The City is duly authorized and is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

b. The City has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the City, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

c. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

2.02. Representations of the Developer. The Developer hereby represents that:

a. The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

b. The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer or any provisions of the Developer's organizational documents, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

c. The Developer has sufficient capital to perform its obligations under this Agreement and will commence construction of the Project within eighteen (18) months of execution of this Agreement.

d. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

ARTICLE 3 THE PLAN AND PID IMPROVEMENTS

3.01 The PID Improvements. The PID Improvements are intended to enhance the proposed implementation of a development within the PID constituting the Project, as more fully described in the Plan.

3.02 PID Improvements description. The PID Improvements consist of acquisition, construction and development of the public improvements within the portion of the PID comprising the Project, as more fully described in Exhibit C, and as described in the Plan. The PID Improvements will be developed pursuant to a schedule consistent with the pace of development of the Project that is mutually agreeable to the Parties. The PID Improvements shall include all engineering, legal and other consultant fees and expenses related to such PID Improvements. The Developer shall be entitled to reimbursement of the project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described above to serve the land within the PID, and such other facilities as may be agreed upon by the Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally conforms to the equivalent of a \$0.65 tax rate for properties covered by the Plan on a project-wide basis, and a maximum fifteen (15) year payment term for each property covered by the Plan.

3.04. Additional Projects. This Agreement does not apply to any projects not specifically included in the Plan and defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4

DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the PID Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the PID Improvements. The Developer will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the PID Improvements, provide periodic reports of such construction to the City upon request, and cause the construction to be performed in accordance with the Plan.

4.02 Design of the PID Improvements. The Developer shall prepare or cause to be prepared the plans and specifications for the PID Improvements. Prior to the commencement of construction or implementation of the PID Improvements, the plans and specifications must be approved by the City. The PID Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Developer shall prepare the PID Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications. The Developer shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds.

4.04. Construction and implementation of the PID Improvements. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the PID Improvements.

a. The Developer shall commence construction of the PID Improvements in a timely fashion to coincide with the expected development of the Project.

b. Upon completion of a contract for the construction of the PID Improvements, the Developer shall provide the City with a final summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable PID Improvements by the City, and upon approval thereof as being in compliance with City standards relating thereto, the PID Improvements will be conveyed to the City, subject only to the right to reimbursement for Developer Advances with respect thereto.

ARTICLE 5 PROJECT FINANCING AND FUNDING

5.01. The Developer Advances.

a. In connection with the construction of the PID Improvements the Developer has determined are required to be constructed to serve the Project, the Developer agrees to provide sufficient funds as such become due for all costs thereof (the "Developer Advances"), such as costs of design, engineering, materials, labor, construction, and inspection fees arising in connection with the PID Improvements, including all payments arising under any contracts entered into pursuant to this Agreement.

b. Interest on each Developer Advance shall accrue at a rate one-half of one percent above the highest average interest rate reported by *The Bond Buyer* newspaper in a weekly bond index in the month before the date of this agreement, compounded annually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. The interest rate shall not exceed eight percent (8%). Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02. Repayment of Developer Advances.

a. In consideration of the development and construction of the PID Improvements, the City shall begin repaying the Developer Advances, and shall continue such repayment until repaid in full, on the earliest date that funds are available from the following source, and solely from such source:

(i) the Net Assessments, subject to the limitations set forth in **subsection (c)**.

b. the City shall reimburse the Developer for Developer Advances, plus interest, from Net Assessments from the Project accumulated in the PID Revenue Fund available in accordance with the priorities described in **Section 5.03** below.

c. At such time as funds are available to pay all or any portion of the Developer Advances made hereunder, the City shall hire a certified public accountant at the Developer's expense to calculate the amount due the Developer and prepare and submit a report to the City certifying the amount due the Developer for the Developer Advances being repaid with interest calculated thereon. Such report shall be approved at the earliest practicable time, but not later than 90 days after submission by the Developer of the records required therefor. The City shall make payment to the Developer within 30 days of approval of the accountant's report.

5.03. Priorities. Amounts deposited in the PID Revenue Fund shall be applied in the following order of priority (i) administrative and operating costs of the PID, (ii) payments to the Developer pursuant to **Section 5.02**, above.

ARTICLE 6 DEFAULT

6.01. Default.

a. If the City does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the Developer under this Agreement, the Developer may enforce specific performance of this Agreement or seek actual damages incurred by the Developer for any such default.

b. If the Developer fails to commence or complete the PID Improvements or the Project in accordance with the terms of this Agreement, including the failure to fund Developer Advances or commence construction of the Project within eighteen (18) months, the City may terminate this Agreement with respect to its obligations to the Developer and shall be relieved of any obligation to reimburse the Developer for any Developer Advances or seek actual damages incurred for any such default.

c. The Party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 60 days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7 GENERAL

7.01. Inspections, audits. The Developer agrees to keep such operating records with respect to the PID Improvements and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City, or by State and federal law or regulation. The Developer shall allow the City access to, and the City shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the PID Improvements that the City deems necessary to assist the City in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement. THE DEVELOPER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, REPRESENTATIVES, AND AGENTS FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT FOR OR ON ACCOUNT OF ANY

INJURIES OR DAMAGES RECEIVED BY ANY PERSON, PERSONS, OR PROPERTY RESULTING FROM THE NEGLIGENT ACTS OF THE DEVELOPER, OR ANY OF ITS AGENTS, OFFICERS, OR REPRESENTATIVES IN PERFORMING ANY OF THE SERVICES AND ACTIVITIES UNDER THIS AGREEMENT.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

City of Tomball
c/o City Manager
401 Market Street
Tomball, Texas 77375

PID Contract Administrator
Hawes Hill Calderon, LLP
P.O. Box 22167
Houston, Texas 77092
Attn: Scott Bean

Yaupon Trails LTD LLC
c/o Jean Michael Rebescher
308 W. Parkwood, Suite 108-B
Friendswood, Texas 77546

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the City and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Parties, and any assignment without such prior written consent, including an assignment by

operation of law, is void and of no effect; provided that, the Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels or other portions of the Project in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.08 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Developer Advances have been repaid in full, or January 1 of the year following the date the last assessment payment has been made in accordance with the PID Service and Assessment Plan and Assessment Roll(s).

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

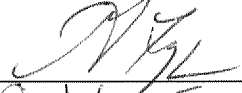
7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such proceedings.

7.16 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of March 16, 2015.

CITY OF TOMBALL, TEXAS

By: 
Name: Gretchen Fagan
Title: Mayor

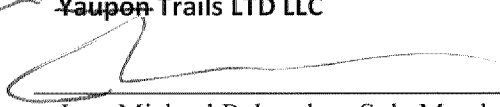
 ~~Yaupon~~ Trails LTD LLC

Jean Michael Rebesch, Sole Member

EXHIBIT A



Windrose Land Services, Inc.
3200 Wilcrest Dr., Suite 325
Houston, Texas 77042
Phone (713) 458-2281 Fax (713) 461-1151

Professional Development Consultants
Land Surveying, Platting, Project Management and GIS Services
Firm Registration No. 10100800

DESCRIPTION OF 10.9460 ACRES OR 476,809 SQ. FT.

A TRACT OR PARCEL CONTAINING 10.9460 ACRES OR 476,809 SQUARE FEET OF LAND, SITUATED IN THE JOSEPH HOUSE SURVEY, ABSTRACT NO. 34, HARRIS COUNTY, TEXAS, BEING ALL OF UNRESTRICTED RESERVE "E" OF FINAL PLAT OF LESLIE'S PARK, MAP OR PLAT THEREOF, RECORDED IN FILM CODE NO. 400005, HARRIS COUNTY MAP RECORDS (H.C.M.R.) AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN THAT CERTAIN DEED OF TRUST BETWEEN LAR PROPERTIES LC AND PATRIOT BANK AS RECORDED IN HARRIS COUNTY CLERK'S FILE NUMBER (H.C.C.F. NO.) 20130365283 AND BEING DESCRIBED AS FOLLOWS WITH ALL BEARINGS BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4204, NAD 83.

BEGINNING AT A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTH END OF A CUTBACK CORNER OF THE INTERSECTION OF THE EAST RIGHT OF WAY (R.O.W.) LINE OF QUINN ROAD (90 FEET WIDE AT THIS LOCATION) AND THE NORTH R.O.W. LINE OF BROWN-HUFFSMITH ROAD (100 FEET WIDE R.O.W.).

THENCE, NORTH 02 DEGREES 10 MINUTES 41 SECONDS WEST, ALONG SAID EAST R.O.W. LINE, A DISTANCE OF 480.73 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE SOUTH LINE OF RESTRICTED RESERVE "A" OF FINAL PLAT OF TOMBALL I.S.D. TRANSPORTATION CENTER, SECTION ONE, MAP OR PLAT THEREOF, RECORDED IN FILM CODE NO. 347073, H.C.M.R. AND MARKING THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT.

THENCE, NORTH 87 DEGREES 34 MINUTES 12 SECONDS EAST, ALONG THE SOUTH LINE OF SAID TOMBALL I.S.D. TRANSPORTATION CENTER, A DISTANCE OF 964.34 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTHWEST CORNER OF A CALLED 9.997 ACRE TRACT TO TREK INVESTMENTS AS RECORDED IN H.C.C.F. NO. T-767809 AND THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT; FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS FOR REFERENCE NORTH 61 DEGREES 52 MINUTES 39 SECONDS EAST, 0.27 FEET.

THENCE, SOUTH 02 DEGREES 18 MINUTES 47 SECONDS EAST, A DISTANCE OF 499.92 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE CURVED NORTH R.O.W. LINE OF BROWN-HUFFSMITH ROAD (BASED ON A WIDTH OF 100 FEET) MARKING THE SOUTHWEST CORNER OF SAID 9.997 ACRE TRACT, THE WEST CORNER OF UNRESTRICTED RESERVE "F" OF SAID LESLIE'S PARK AND THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS FOR REFERENCE NORTH 13 DEGREES 05 MINUTES 16 SECONDS WEST, 0.28 FEET.

THENCE, ALONG SAID CURVED R.O.W. LINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 2,018.50 FEET, A CENTRAL ANGLE OF 02 DEGREES 13 MINUTES 53 SECONDS, AN ARC LENGTH OF 78.61 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 89 DEGREES 11 MINUTES 22 SECONDS WEST, 78.61 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR A POINT OF TANGENCY.



Windrose Land Services, Inc

3200 Wilcrest Dr., Suite 325

Houston, Texas 77042

Phone (713) 458-2281 Fax (713) 481-1151

Professional Development Consultants

Land Surveying, Platting, Project Management and GIS Services

Firm Registration No. 10108800

THENCE, SOUTH 88 DEGREES 04 MINUTES 25 SECONDS WEST, CONTINUING WITH SAID NORTH R.O.W. LINE, A DISTANCE OF 873.68 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR AN ANGLE POINT.

THENCE, SOUTH 87 DEGREES 34 MINUTES 18 SECONDS WEST, CONTINUING WITH SAID NORTH R.O.W. LINE, A DISTANCE OF 3.86 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING SOUTHERLY END OF A CUTBACK CORNER AND A SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT.

THENCE, NORTH 47 DEGREES 18 MINUTES 05 SECONDS WEST, A DISTANCE OF 13.11 FEET TO THE PLACE OF BEGINNING AND CONTAINING 10.9460 ACRES OR 476,809 SQUARE FEET OF LAND, AS SHOWN IN JOB NO. 51981 FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC.




MIKE KURKOWSKI
R.P.L.S. NO. 5101
STATE OF TEXAS
51981

09/10/14
DATE

EXHIBIT B

Description of Residential Development

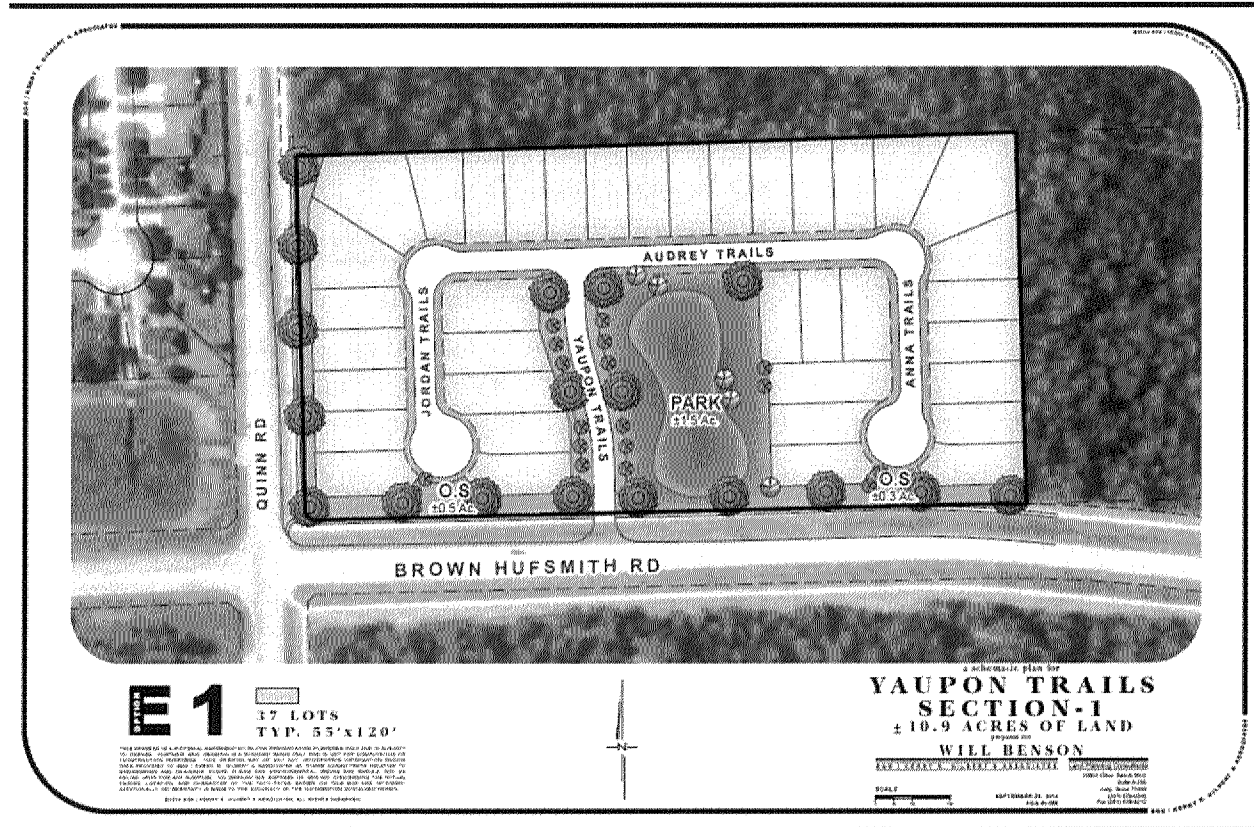


EXHIBIT C

The PID Improvements

Storm & Detention - \$470,350.

Water Distribution - \$81,450.

Sanitary Distribution -\$125,800

Paving - \$341,625

Electrical, Gas, & Street Lights - \$62,500

TOTAL EST - \$1,081,725

Landscaping - \$103,000